

1 IN THE UNITED STATES DISTRICT COURT  
2  
3 FOR THE DISTRICT OF ARIZONA  
4  
5 Jane Doe #1; Jane Doe #2; Norlan Flores )  
6 on behalf of themselves and all others )  
7 similarly situated, )  
8 )  
9 Plaintiffs, )  
10 ) CV-15-0250-DCB  
11 vs. )  
12 ) Tucson, Arizona  
13 ) January 16, 2020  
14 Chad Wolf, Acting Secretary of )  
15 Homeland Security; Mark A. Morgan, ) 1:16 p.m.  
16 Acting Commissioner, U.S. Customs and )  
17 Border Protection; Carla L. Provost, )  
18 Chief of United States Border Patrol, )  
19 in her official capacity; Roy D. )  
20 Villareal, Chief Patrol Agent-Tucson )  
21 Sector, in his official capacity, )  
22 )  
23 Defendants. )  
24 )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 BENCH TRIAL DAY FOUR  
SESSION 2 of 2

17 BEFORE: THE HONORABLE DAVID C. BURY  
UNITED STATES SENIOR DISTRICT JUDGE

21 Cheryl L. Cummings, RDR-CRR-RMR-CRC-CRI  
22 Official Court Reporter  
23 Evo A. DeConcini U.S. Courthouse  
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2

WITNESSES CALLED ON BEHALF OF THE DEFENSE

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LINUS ROLAND ALEXANDER

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DIRECT BY MS. MASETTA-ALVAREZ

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BRADLEY DAVIS

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1 P R O C E E D I N G S

2 (Proceedings commenced at 1:16 p.m., as follows:)

3 THE COURT: All right. Back on the record. We're  
4 ready for our next witness, I believe, aren't we?

5 MS. MASETTA-ALVAREZ: Your Honor, defendants call  
6 Linus Roland Alexander.

7 LINUS ROLAND ALEXANDER, DEFENSE WITNESS, SWORN

8 THE CLERK: If you please state your full name and  
9 spell your last name for the record. You can be seated.

10 THE WITNESS: Yes, ma'am. Turning my phone off.

11 My name is Linus Roland Alexander.

12 THE CLERK: Have you seat, sir. Thank you.

13 THE WITNESS: My name is Linus Roland Alexander.  
14 Last name is Alexander, spelled A-l-e-x-a-n-d-e-r.

15 THE COURT: All right. Sir, go ahead, Counsel.

16 MS. MASETTA-ALVAREZ: Okay.

17 DIRECT EXAMINATION

18 BY MS. MASETTA-ALVAREZ:

19 Q. Good afternoon. Please introduce yourself to the Court.

20 A. My name is Roland, Linus Roland Alexander. I'm the  
21 compliance inspector over at CBP, Tucson Sector.

22 Q. And by CBP, do you mean Customs and Border Protection?

23 A. Customs and Border Protection, ma'am.

24 Q. Are you here to testify about your experience as a  
25 compliance officer at the Tucson Sector of Customs and Border

1 Protection?

2 A. Yes, ma'am, I am.

3 Q. I'd like to first talk to you about your background.

4 Where do you live?

5 A. I live here in Tucson, Arizona.

6 Q. Have you always lived in Tucson?

7 A. No, ma'am, I have not.

8 Q. When did you move here?

9 A. August 2001.

10 Q. What brought you to Tucson?

11 A. I was active duty military and we had received a PCS, a  
12 permanent change of station, me and my wife.

13 Q. Did you grow up in Tucson?

14 A. No, ma'am. I grew up in Jersey City, New Jersey, and I  
15 lived in Statesboro, Georgia, for two years.

16 Q. Did you go to high school in New Jersey?

17 A. I went to high school in Jersey City and in Statesboro.

18 Q. Did you graduate high school?

19 A. Yes, ma'am.

20 Q. What year did you graduate high school?

21 A. 1987.

22 Q. Did you attend college?

23 A. I attended some classes that I took while I was in the  
24 Air Force on station versus going to a campus.

25 Q. Okay. Now I want to talk to you a little bit about your

1 employment history, so before you became a compliance officer  
2 at the Tucson Sector. All right?

3 A. Yes, ma'am.

4 Q. All right. Okay. Do you have any previous experience in  
5 doing compliance evaluations or inspections?

6 A. Yes, ma'am, I do. From my military career.

7 Q. And by "military career," do you mean the Air Force?

8 A. Yes, ma'am. I was -- I'm retired from the Air Force. I  
9 did 23 years. And the last 10 years of me being in the  
10 Air Force, I was involved in the compliance side of the house.  
11 And I was the compliance superintendent the last 7 or 8 years  
12 of my Air Force career.

13 Q. Now, did you receive any training to be in the compliance  
14 division of the Air Force?

15 A. Yes, ma'am. I received technical training when it came  
16 down to compliance aspects of inspecting the fuel and things  
17 that we handled, because my primary mission was the fuel  
18 specialist. I received training when it comes down to the  
19 environmental aspects of things as far as the regulations,  
20 covering EPA and safety. And bioenvironmental as well.

21 Q. What year did you leave the Air Force?

22 A. I left the Air Force -- I retired in December of 2010.

23 Q. What did you do after you retired from the Air Force in  
24 2010?

25 A. I was hired by the United States Secret Service office

1 here in Tucson, Arizona.

2 Q. What did you do for the Secret Service?

3 A. I was the administrative officer for the Tucson resident  
4 office.

5 Q. Did that involve compliance evaluations?

6 A. No, ma'am. It was more logistics and administrative  
7 work.

8 Q. How long were you at the Secret Service?

9 A. I was at the Secret Service roughly four years. Three,  
10 three, three, yeah, three and a half, going on four.

11 Q. And do you have any previous experience in custody  
12 conditions?

13 A. No, ma'am. Not formally. I have knowledge of through  
14 the Air Force. When I first came in the service, we had --  
15 there were certain types of corrective postures that the  
16 commanders are given. I'm an NCO, but officers are  
17 given certain -- NCO is a noncommissioned officer. I'm -- we  
18 have certain types of aspects of discipline that have to be --  
19 that have to be enforced because of the nature of our job.

20 So something that would get someone a verbal counseling  
21 in a civilian sector may warrant correctional custody in a  
22 military from the military side of the house. And with that  
23 being said, our -- our security forces organization has  
24 holding and detainment unit for bad soldiers, for lack of a  
25 better term. You get in trouble, you're doing something you

1        shouldn't have, you've been late for work or what have you,  
2        you could be -- the commander could see fit to give you three  
3        weekends of correctional custody.

4            And me as an NCO or noncommissioned officer, all of my  
5        subordinates, I had to be aware of that tool. And if a need  
6        ever arise for an assessment to be made, that I would be able  
7        to advise the commander whether or not that type of corrective  
8        action would be warranted.

9        Q.        Were you involved in making any custody conditions  
10        determinations?

11        A.        Absolutely not. No, ma'am.

12        Q.        Okay. When did you begin your position as a compliance  
13        officer at the Tucson Sector?

14        A.        In June of 2018.

15        Q.        Can you please describe your job duties?

16        A.        I have two -- I have two primary job duties, and both of  
17        them are centered around inspections and evaluations of our  
18        own internal practices. One is I'm a compliance -- I'm the  
19        facilities inspector for compliance to make sure that we're  
20        abiding by the actual Customs and Border Patrol's or CBP's  
21        Customs policy when it comes down to short-term hold  
22        detention -- detention and custody, the TEDS which is the  
23        United States custody escort and detention -- I just know them  
24        by acronym so you've got to excuse me -- and then also the --  
25        the Jane Doe injunction and then also the Flores Reno

1 settlement agreement where we look to make sure that we're  
2 abiding by those guidelines.

3 Q. Now, you said you evaluate for compliance with these  
4 various policies and court orders. Do you do inspections to  
5 evaluate these policies?

6 A. Yes, ma'am. I was charged to perform no notice  
7 compliance evaluations in all of the Tucson Sector stations  
8 that have a holding facility.

9 Q. Do you write any reports based on your compliance  
10 evaluations?

11 A. Yes, ma'am. I do. I write what we call an after action  
12 report or a memoranda outlining the actual inspection that I  
13 did, the areas that I looked at and what the overall outcome  
14 came out of that -- those evaluations.

15 Q. Okay. I want you to walk the Court through one of your  
16 compliance evaluations. First let's start with scheduling.

17 Who sets up the schedule?

18 A. I set up the schedule, ma'am.

19 Q. And how do you determine when to schedule one of these no  
20 notice compliance evaluations?

21 A. I look -- I look at the actual stations, what time --  
22 what quarter we're in. Like, each quarter we have a minimum  
23 that we're going to inspect every station a minimum of once a  
24 quarter. We can inspect more, but we're going to shoot -- the  
25 target is to get it done once a quarter.

1           So what I'll do is I'll take a look at my schedule as far  
2 as what I have going on and what I -- where I need to be at  
3 and what I -- when I want to inspect. And then I'll  
4 coordinate over at the TCC or the Coordination, the Tucson  
5 Coordination Center to make sure that I have a lead evaluator  
6 to accompany me when I go out.

7           Once I've done that, the next thing I'll do is I'll look  
8 at the previous -- my previous inspections and I'll look at --  
9 the calendar in the quarterly basis to make sure that I  
10 haven't established a pattern of showing up around the same  
11 time at these different stations. And then I'll mix them  
12 around to make sure that there isn't -- it isn't predictable  
13 when I'm going to come. And then I'll billet them and then  
14 I'll make sure that I have -- I have my support -- my  
15 supporting partner.

16 Q.    Okay. I want to break that down a little bit. You said  
17 that you try to evaluate each station once per quarter. What  
18 length of time is a quarter?

19 A.    Okay. We have two ways of looking at it from the  
20 quarterly. The calendar year quarterly starting in January,  
21 we divide it into, January, February, March; or we operate off  
22 fiscal year for this particular deal, so it would be October,  
23 November, December will be first quarter. January, February,  
24 March, second quarter and so on.

25 Q.    So once every three months, approximately?

1 A. Yes, ma'am.

2 Q. And you also mentioned that when you're looking at  
3 scheduling, you're also coordinating with a lead evaluator?

4 A. Yes, ma'am.

5 Q. Who is a lead evaluator?

6 A. A lead evaluator is normally a Customs and Border  
7 Protection agent or a badge carrier, and we usually pull that  
8 individual from the Tucson Coordination Center. This  
9 individual will go in and look inside of the -- it's called  
10 the e3DM or it's the electronic detention module. And his or  
11 her job is to go inside of that actual program because during  
12 the processing of detainees when they embark into custody,  
13 everything about them has to be loaded in. A lot of that  
14 information is law enforcement sensitive, so I'm not -- really  
15 not privy to be looking in that. So we'll have an agent that  
16 is authorized to do that, to look into it.

17 Q. Now, does this lead evaluator or Border Patrol agent that  
18 accompanies you on the compliance evaluations -- I'm sorry,  
19 that is involved in the compliance evaluations, does this lead  
20 evaluator go on the actual compliance evaluation with you?

21 A. Yes. We coordinate together to make sure that we -- our  
22 slates are clear and that when I set the appointment, that we  
23 see -- we follow it all the way through to completion.

24 Q. Now, let's walk through one of your inspections.

25 What do you bring with you when you are going to inspect

1 a station for compliance?

2 A. When I'm going to inspect a station for compliance, I'll  
3 bring my clipboard. Inside of my clipboard I'll have, of  
4 course, a notebook. I'll have my checklist. I'll have my --  
5 any best practices that are paper documents that we want to  
6 share or cross-tell with the stations to make sure we can  
7 establish and maintain some uniformity.

8 And I'll bring the last performance evaluation report  
9 that I wrote on that station because in that -- in that  
10 performance evaluation point, if there's any deficiencies or  
11 maybe, let's say, a best practice, I may want to revisit that  
12 to see -- well, mostly is when if I have a finding or an  
13 infraction, I'm going to revisit that finding or infraction  
14 when I go back down there. So I'll bring that report so that  
15 everything is transparent with the patrol agent in charge  
16 who's running the station and everyone involved once I come  
17 down and we announce ourselves.

18 Q. Okay. You said that you bring -- one of -- you said one  
19 of the items you bring with you is a checklist?

20 A. Yes.

21 Q. If I showed the checklist, do you think you would  
22 recognize it?

23 A. Yes, ma'am.

24 MS. MASETTA-ALVAREZ: Ms. Kershaw, can you put on  
25 the screen and this can go on the public screen as well

1 joint -- excuse me -- joint Exhibit 870. I'm sorry, one  
2 moment to confer, your Honor?

3 THE COURT: Sure.

4 MS. MASETTA-ALVAREZ: Thank you.

5 BY MS. MASETTA-ALVAREZ:

6 Q. Mr. Alexander, do you recognize what's in front of you?

7 A. Yes, ma'am, I do.

8 Q. What is it?

9 A. It's -- it's our compliance inspection checklist for TCA  
10 or Tucson Sector.

11 Q. Okay. Do you use this checklist during your evaluations?

12 A. Yes, ma'am, I do.

13 Q. Is that a regular practice of your evaluations?

14 A. Yes, ma'am, standard.

15 Q. Are compliance evaluations a regular practice of the  
16 Tucson Sector?

17 A. Yes, ma'am, standard.

18 Q. Are you the person who fills out this checklist?

19 A. Yes, ma'am.

20 Q. And do you fill it out at or near the time that you're  
21 completing the compliance evaluations?

22 A. Yes, ma'am.

23 Q. And would you consider yourself a person who has  
24 knowledge of the compliance evaluations of the Tucson Sector?

25 A. Yes, ma'am.

1 Q. Okay.

2 MS. MASETTA-ALVAREZ: Your Honor, defendants offer  
3 joint Exhibit 870 into evidence as a business record under  
4 8036.

5 MR. De GANON: No objection, your Honor.

6 THE COURT: It's admitted.

7 (Exhibit 870 entered into evidence.)

8 BY MS. MASETTA-ALVAREZ:

9 Q. Now, Mr. Alexander, I want to direct your attention to  
10 the top of the first page of the holding facility compliance  
11 evaluation. There's a paragraph on the top of that page. Is  
12 that right?

13 A. Yes, ma'am.

14 Q. Okay. What is that -- what's the purpose of that first  
15 paragraph?

16 A. To establish why we're doing what we're doing when it  
17 comes down to the compliance evaluation, that we're going to  
18 meet all of those directives and policies that's listed above.  
19 Or I'm going to ensure that we're doing it properly.

20 Q. Okay. I also notice on this compliance evaluation  
21 checklist that there are Border Patrol policies and  
22 regulations and other documents cited to in each of the  
23 checklist items. Do you know why those are there?

24 A. Yes, ma'am. They're there, one, because they're --  
25 they're a Customs and Border Protection policy. They're there

1 because they're either some type of court order or injunction  
2 that says that we will do that or they're there because --  
3 which right now we don't have anything added. If there's  
4 anything additional that the sector chief will want me to look  
5 at, then it would also be added to it. But as of right now,  
6 it is for the actual holding facilities itself.

7 Q. Do the holding facilities or the stations that you  
8 monitor compliance of receive a copy of one of these  
9 compliance evaluations?

10 A. Yes, ma'am. They will receive a copy of my checklist and  
11 they'll also receive a copy of the after action report once  
12 it's done.

13 Q. Do they receive a -- or do all of the stations have a  
14 copy of the compliant -- of the compliance evaluation for  
15 their own knowledge and compliance, internal compliance?

16 A. Yes, ma'am. We -- as a practice, we hand out the  
17 checklist that we use to do the evaluations to all of the  
18 stations and all of the SMEs or subject matter experts so  
19 they'll have a clear understanding of where we pulled the data  
20 that -- excuse me, that directed us to go out and conduct said  
21 inspection. And that is not something that we came up  
22 ourselves; it's something that we're mandated to take care of  
23 by instruction.

24 Q. Mr. Alexander, we're going to go through this checklist.  
25 We're going to go through each checklist item number that

1      pertains to the actual holding facilities and custody  
2      conditions. Okay?

3      A. Yes, ma'am.

4      Q. Let's start with checklist No. 1.

5           Now, checklist No. 1 asks: Are policies posted slash  
6      visible or contained in an accessible binder for all agents to  
7      use.

8           Now, how do you -- what are you looking for when you are  
9      evaluating for checklist Item No. 1?

10     A. I'm looking to see that it is -- it is physically there  
11    and that it is tabbed out properly so that those references  
12    can be easily looked up and referred to if needed on the  
13    floor.

14     Q. You said you're looking to make sure that it is posted  
15    up. What do you mean by "it"?

16     A. The policy. The binder. Nine times out of ten, the  
17    binder is kept inside of the control room of that holding  
18    facility. And in that control room there's going to be  
19    various documents and various go-bys and directives. But we  
20    want those directives to be set aside and set out so that  
21    they'll be easily -- you can easily find them and everyone is  
22    knowledgeable of it and what's in it.

23     Q. Okay. And when you say that you have a binder of  
24    these -- I think you said maybe policies or directives?

25     A. Yes, ma'am.

1 Q. Are those the four that are listed in checklist Item  
2 No. 1?

3 A. Yes, ma'am.

4 Q. Can you give any examples of noncompliance with checklist  
5 Item No. 1?

6 A. Noncompliance would be I ask for the binder to see  
7 whether or not they have it on -- on station readily available  
8 and it's not there. They can actually have the binder there  
9 and it's -- one -- one of these policies or directives is not  
10 in it. They can have it -- they can have this binder and have  
11 all of those policies and directives in there, but if there  
12 has been a change unless a new revision has come out, it will  
13 have the latest up-to-date revision, that can be an infraction  
14 as well.

15 Q. Now, overall, based on your experience as a compliance  
16 officer for the Tucson Sector since June 2018, would you say  
17 that most stations have been compliant with checklist Item  
18 No. 1 during your compliance evaluations?

19 A. Yes, ma'am. I would.

20 Q. Let's move on to check Item No. 2. Checklist items No. 2  
21 asks: Does your location have comprehensive detainee  
22 supervision guidelines that meet the detention standard.

23 Now, this looks like it's broken up -- let me rephrase.

24 Is this broken up into two sections, No. 2?

25 A. Yes, ma'am. It's broken into two: A and B.

1 Q. Let's start with A first. A says video surveillance.  
2 What are you looking for to determine whether a particular  
3 station has comprehensive detainee supervision guidelines  
4 meeting the video surveillance portion of the compliance  
5 evaluation?

6 A. That would mean that that station or that holding  
7 facility would have video surveillance, real-time video  
8 surveillance of that -- those particular holding rooms, and  
9 that the actual video itself is clear on the monitors that can  
10 be -- that can be seen in the control room, and that each one  
11 of those rooms that will provide an image that is -- that can  
12 be seen, is pixelated in the areas where you would have to  
13 pixelate, like the latrine area because of privacy issues.

14 Q. Can you give an example of noncompliance or where you  
15 find noncompliance?

16 A. If they have the video system installed and not on,  
17 they're not monitoring it. If the system is on and there's  
18 some problem as far as when you're looking at the monitors,  
19 it's not clear, it's not concise. If there's any type of  
20 issue where the pixelation isn't providing the proper amount  
21 of privacy for any one of the detainees using the actual  
22 facilities, for instance, the latrine area.

23 Q. But these -- excuse me. Based on your experience as a  
24 compliance officer since June 2018, would you say that most  
25 facilities that you've inspected have been compliant with

1 checklist Item No. 2a, video surveillance?

2 A. Yes, ma'am. I would.

3 Q. Let's move on to subsection B, welfare checks. How --  
4 what are you looking for to determine whether or not a  
5 facility is compliant with the welfare checks portion of the  
6 compliance evaluation?

7 A. The welfare checks is a broad -- is a broad phrase in  
8 itself. So it will encompass a lot of different aspects from  
9 meal service to providing amenities and personal hygiene items  
10 and things of that nature. But it also carries a deal is when  
11 it comes down to the physical aspects of making sure a person  
12 is in good -- their well being is being sought -- being  
13 monitored and sought after.

14 In other words, if I was to go down into a station and  
15 give -- for lack of better term, if I go to the station and  
16 while I'm in that station I'm going to start my inspection, my  
17 evaluation, and I can look into a holding room and in this  
18 holding room I see that we have, let's say, a teenage female  
19 in a room with it's obviously an adult male, I'm going want to  
20 know what's going on. Because that's cohabitation. That's  
21 not -- that is not the way you want to have her placed for her  
22 own safety and well being.

23 So there are certain guidelines that say we will keep  
24 juveniles and adults separated.

25 Q. So would you say that part of this -- part of your

1 evaluation for welfare checks is a visual inspection?

2 A. Yes, yes, yes, ma'am. A visual inspection, you're  
3 looking for the obvious -- obvious indicators of things that  
4 are not necessarily the way they should be. If an individual  
5 looks like they suffered from trauma, if an individual looks  
6 like they're isolated or they're under some type of duress,  
7 all of these things are -- fall under the same umbrella to  
8 make sure they're taken care of and the safety is being  
9 protected.

10 Q. Mr. Alexander, have you ever found noncompliance based on  
11 your visual inspection for welfare checks?

12 A. No, ma'am, I have not.

13 Q. Is e3DM also part of this welfare check portion?

14 A. Yes, ma'am. Primarily when -- for instance, while I'm  
15 filling out this checklist real-time, that area, I'm looking  
16 around because it gives me my mental cue to eyeball and make  
17 mental assessments of what I'm looking at. But at the same  
18 time simultaneously, my -- the lead evaluator is actually at  
19 one of the control rooms or usually at the processing desk  
20 when I'm down on the floor itself and he's logged into e3DM.  
21 And in e3DM he is validating, that those items that are  
22 required for welfare checks have been checked off and have  
23 been annotated, for lack -- because I don't know if it's a  
24 check or if it's a memo they write because I don't -- I can't  
25 see into it. But he's making sure that those -- that process

1 has taken place and has been documented on based on the  
2 samples that that he's pulled to evaluate.

3 Q. Remind me, Mr. Alexander, why are you not the person  
4 looking in the e3DM logs?

5 A. I'm not a badge carrier and a law enforcement officer,  
6 and that system carries law enforcement officer sensitive  
7 information that I don't have the -- there's no need for me to  
8 see it.

9 Q. Based on your experience since June 2018, would you say  
10 that most stations are generally compliant with checklist Item  
11 No. 2B, welfare checks?

12 A. Yes, ma'am. I would.

13 Q. Let's move on to checklist Item No. 3. E3DM logs.

14 Now, Mr. Alexander, are you the person that is looking  
15 for compliance with these e3DM logs in checklist Item No. 3?

16 A. Yes and no. I'm looking at the physical aspects of the  
17 meals, the drinking water, the -- like the visuals I will  
18 pull, visual assessments I'm making as far as the overall  
19 health and welfare of the detainees that I can physically see  
20 and the bedding. And then under "other," usually we're  
21 looking at consulate and -- consulate notifications and PREA.  
22 Those are the two main ones that I wind up using the "other"  
23 for.

24 On the flip side simultaneously, the lead evaluator is in  
25 the e3DM module which is the electronic detention module, and

1       they're looking to see whether or not those amenities and  
2       those -- those items have been checked off in a timely manner  
3       for when they're prescribed to be provided to the detainees.

4       Q.     And have you ever had any reason to think that the lead  
5       evaluator or Border Patrol agent that accompanies you and  
6       looks at these e3DM logs is lying about the data that he or  
7       she is seeing?

8       A.     No, ma'am, I have no reason to believe that.

9       Q.     Let's go through each of these and talk about -- and  
10      discuss what you're looking for in regards to compliance.

11       So if you look at 3a, meals.

12       A.     Yes, ma'am.

13       Q.     What are you looking for to determine compliance with  
14      meals?

15       A.     Physically, I look at where the meals are being kept. I  
16      look at the pantry area. Some -- we have -- they have dry  
17      storage areas. They have freezers and things of that nature.  
18      I look to see whether or not the items are readily available.  
19      And if they are readily available, that the items have been  
20      inspected to make sure that they're -- if they're supposed to  
21      be frozen, they're frozen. If -- the actual expiration dates  
22      of the food provided to the detainees, the shelf life is good.  
23      That nothing is outside of the shelf life that they're going  
24      to serve to them as -- like as far as a support function as  
25      far as providing meals and snacks.

1           When it comes down to the water, the juice, milk, baby  
2 formula --

3 Q.    I'm sorry, Mr. Alexander, are we on 3b?

4 A.    Excuse me. I'm sorry. I'm sorry, I got on a tangent,  
5 I'm sorry.

6 Q.    It's okay. I just want to make sure for the record.

7 Sure. So go on. So 3b. Drinking water, juice, milk and baby  
8 formula?

9 A.    Drinking water, if there's a -- any place where a  
10 detainee -- water will be provided so it's not a question of  
11 if. Water will be provided for them. Wherever that -- they  
12 can source that drinking water, that area or that actual --  
13 that source will be marked as potable. Potable water. That  
14 means they can drink it.

15       When it comes down to the juice, the juice falls under  
16 the same -- the same threshold that I'm using when I'm looking  
17 at the actual meals, that is, the expiration date on it. Has  
18 it exceeded the expiration date. Is it free of pests and  
19 bugs. And is the actual general area where they keep the food  
20 and everything being kept in a clean and professional manner.

21 Q.    I know you talked about welfare checks earlier, but is  
22 there anything else you're looking for as far as welfare  
23 checks go in item 3c?

24 A.    Again, yes and no. It all depends. I cannot tell you  
25 what it's saying in e3DM for the welfare checks. I can just

1      look at the overall impression and the overall condition that  
2      I'm seeing the facility is in.

3           The housekeeping is part of welfare, too. If -- if the  
4      rooms are not clean and sanitized, if the mats are dirty, if  
5      the cups they're going to drink water out of have sand on them  
6      or stuff like that, that's a no go. That's a no fly. It's a  
7      write-up for lack of better term, excuse me. So yes,  
8      that's -- it's so broad we can just go and go and go on that.

9      Q.     Okay. Let's look at checklist item 3D, medical care to  
10     include medical screening forms. Do you evaluate the medical  
11     screening forms or the medical care?

12     A.    No, ma'am. I do not. That would be the lead evaluator  
13     that's checking it through e3DM.

14     Q.    Why don't you look at these?

15     A.    That's PREA -- or not PREA, but PII, personal  
16     identifiable information that I don't necessarily need to have  
17     or see. Excuse me.

18     Q.    Okay. Let's look into Item 3e, bedding slash blanket.

19     A.    Yes, ma'am.

20     Q.    What are you looking for when you were determining  
21     compliance with bedding slash blanket?

22     A.    I'm looking, one, to make sure that a bedding or a  
23     blanket is being provided, No. 1. No. 2, if the bedding and  
24     blanket are being provided, that the bedding and blankets that  
25     are provided are serviceable. Serviceable meaning you're not

1 providing a bedding that's got holes in it, that might have  
2 pests in it, that is torn and ripped, soiled, what have you,  
3 and the same for the blanket which is a mylar blanket if I'm  
4 not mistaken.

5 Q. Are these visual inspections that you're doing?

6 A. Yes. Yes, ma'am.

7 Q. And what about 3f, other. What are you looking for in  
8 3f, other?

9 A. 3f, other. I have, like -- it's -- other is written  
10 there so that if I have to fill in something that might come  
11 out that's kind of unique, that I write it in. But primarily,  
12 I'm looking to find out whether or not if we had juveniles  
13 that are on -- that were part of the swatch that the lead  
14 evaluator -- when I say swatch, that means the lead evaluator  
15 is going to go in and from the last time that we did an  
16 inspection, he's going to take from that date all the way up  
17 to the day we walk through the door and announced ourselves at  
18 that station to do the next inspection, he's going to take a  
19 swatch or a random sample of several different events.

20 And when he does that, what he grabs, if that -- if --  
21 well, let's say if an event they have some juveniles in  
22 that -- listed in the event. Then they're looking to see if  
23 consulate notifications were actually done. They're looking  
24 to see whether or not phone calls had been provided. They're  
25 going to look at if, for instance, God forbid we ever have an

1 issue, if there's an issue of PREA, that if a PREA situation  
2 came up, that that detainee had the telephone number and the  
3 information they needed to make -- so they could make a call  
4 to get the type of assistance they needed.

5 So I would identify that on the paper as an indicator of  
6 what specifically it was that may be mentioned in the -- in  
7 the -- in the after action report because it's something that  
8 evaluated or that the lead evaluator evaluated.

9 Q. Now, based on your experience since June 2018, are the  
10 Border Patrol stations that you have evaluated generally  
11 compliant with the checklist items in No. 3?

12 A. Yes, ma'am. They are.

13 Q. Let's move on to checklist Item No. 4. It reads: Are  
14 detainees being promptly processed and transferred out as soon  
15 as administratively feasible.

16 Mr. Alexander, what are you looking for to determine  
17 checklist Item No. 4?

18 A. When it comes down to that, it goes again -- it prongs  
19 into two prongs. The physical portion that I'm looking at a  
20 lot of times is going to be the actual -- the conducting of  
21 those detainees. Because a lot of times because we come  
22 unannounced, we may catch them in the middle of processing  
23 people out or processing people in, and I can actually  
24 evaluate that process to see if it's flowing seamlessly or if  
25 there's a whole lot of hang-ups or things that are causing the

1 process to slow down because of not being managed properly.

2 My counterpart, the lead evaluator, he'll be looking  
3 inside e3DM looking at the timetable that was window stamped  
4 to the event log for that group of people to see when they  
5 came in, to see whether or not did they take all of the  
6 requirements that we -- that we have to take care of once we  
7 take -- take them into our care and custody. So -- the  
8 detainees when I say "they."

9 When he looks at that to make sure that we provided what  
10 we're suppose to provide, when we're supposed to provide it  
11 and how it's supposed to be provided on intervals the way it's  
12 supposed to be done. And I'm looking at the physical side of  
13 it which would be the end result. I see the individual going  
14 and receiving a meal. I see the individual being taken to --  
15 let's say they're going to take them to court. So now they're  
16 going over to the contractor, which is a courier that moves  
17 them. That's where the I-216 comes into play. It's like a  
18 manifest, a chain of custody of who all was being carried and  
19 where they are being carried to.

20 Q. So I know there's a lot that goes into -- it sounds like  
21 there's a lot that goes into checklist Item No. 4. Would it  
22 be safe to say that you're looking for processing delays on  
23 the part of CBP when you're evaluating for checklist Item  
24 No. 4?

25 A. We would be looking for processing delays. I'm looking

1 at the delay as far as how -- how -- how smoothly they are  
2 able to move the individuals through, the actual processing  
3 process. And my lead evaluator is looking at the timetable or  
4 the time stamps on when they got these individuals to certain  
5 stages to be ready to be processed out. Because in a  
6 detention standard, short-term custody hold room I believe is  
7 Chapter 610 or something of that nature. At a certain hour  
8 amount, a report would be sent up to the patrol agent in  
9 charge if we cannot get a particular individual out by a  
10 particular time window. So that corrective actions or some  
11 type of decisions could be made to expedite that process.

12 Q. And based on your experience since June 2018, would you  
13 say that the Border Patrol facilities that you've evaluated  
14 have been generally or most of the time compliant with  
15 checklist Item No. 4?

16 A. To meet the administrative portion, yes, ma'am.

17 MS. MASETTA-ALVAREZ: Ms. Kershaw, if you could  
18 please go to page 2.

19 BY MS. MASETTA-ALVAREZ:

20 Q. Okay. Let's look at checklist Item No. 5. Checklist  
21 Item No. 5 asks: Does your location have hold rooms which  
22 meet the requirements as set forth in the national standards  
23 on transport, escort, detention and search, otherwise known as  
24 TEDS.

25 Now, it looks like it has several subsections. Let's go

1 through each one individually.

2 Mr. Alexander, what are you looking for to determine  
3 compliance evaluation with checklist Item 5a, toilet and sink?

4 A. I physically go into the hold room itself and I  
5 physically actuate the toilets and the sink to make sure that  
6 they're functioning properly.

7 Q. Do you flush the toilets?

8 A. Yes, ma'am. I -- do you want that -- do you want me to  
9 explain how I go about the process of doing it or --

10 Q. It's up to you.

11 A. Well, what -- what I do is when I into the -- into that  
12 area, first of all I make sure no one is actually using the  
13 latrine or I'm not invading their privacy while they're using  
14 it. But once I go into there, what I'm going to do is I'm  
15 going to take some toilet paper from the toilet roll, I'm  
16 going to actuate the soap dispenser, I'm going to actuate the  
17 sink to make sure the water is running. If it's the water  
18 fountain, that the water is coming out of the water fountain  
19 high enough that you can drink from it. I'm going to look to  
20 make sure that the sink and water fountain is in a clean -- is  
21 clean and is not filthy and dirty or can possibly cause  
22 somebody to get sick. Then I'm going to actuate the toilet.  
23 When I dispose of the toilet paper, I'm putting it in the  
24 toilet and I'm flushing it because I flush 100 percent of all  
25 of the toilets and actuate 100 percent of all of the sinks and

1       faucets that's inside that room each time I go in there.

2       Q.     Do you go into each room when you inspect a facility?

3       A.     I go into -- what I -- not all of the time. I'll  
4       go in -- what I usually do is I'll take from the last  
5       inspection which rooms I went into the last time and I try not  
6       to do those again. I try to do another sample.

7               So what I'll do is ask the SME or the subject matter  
8       expert that's escorting me if he can go ahead and take me -- I  
9       want to inspect a room that he has set up for an adult male,  
10      adult female, a juvenile male, a juvenile female or a  
11      families. Because sometimes they have families. I want to go  
12      there. And then based on what he has available that's open or  
13      if they're even using them -- because I'll go in if they have  
14      people in there as well. But I'll take that actual number and  
15      then I'll write it down. And then I'll count how many rooms  
16      there are and we'll do 50, 60, 70, 80 percent. And then I'll  
17      go into those rooms and do my checks.

18       Q.     All right. Let's talk about checklist Item 5b,  
19      professional cleaning and sanitizing at least once per day and  
20      in parentheses, it says log.

21               How do you evaluate compliance for this subsection?

22       A.     I go down and when I'm down -- it is the usually the  
23      actual contractors which I believe is JPI Industries, the  
24      contractor that takes care of the cleaning of the facilities.  
25      I usually bear witness to them actually going through the

1 process because I'm there in the morning or kind of toward  
2 lunch and they're in there cleaning up. Which a lot of times  
3 they're coming in to prepare for people coming in or to clean  
4 up after people are disembarked.

5 So I'll usually see them there. And then I'll also go  
6 and either get in contact with whatever custodian that's in  
7 charge and have them take me to wherever they keep their  
8 logbook. And I'll pull the logbook and look again, sample  
9 dates from when the last time I was there to that date, I'm  
10 looking at that swatch window to see did they clean, what they  
11 checked off, and what intervals are they doing it. For  
12 instance, if they've got we clean the sinks monthly, that's  
13 not going to be a satisfactory interval. It's going to be  
14 daily, probably more than once a day. That type of thing.

15 Q. Okay. So let's look at checklist Item 5d or, I'm sorry,  
16 5c. Drinking fountains or drinking -- or clean drinking water  
17 along with clean drinking cups.

18 How are you evaluating this subsection?

19 A. Through physical inspection. I'll go and I'll look.  
20 There are some sinks that are -- have low pressure so the  
21 water doesn't shoot all the way high out the fountain so  
22 they'll provide water coolers. If they provide a water cooler  
23 in the room, then that water cooler needs to be marked with  
24 potable water. Put ice in the water cooler and make sure the  
25 water is cool. Provide clean cups. Most of the time the cups

1 come in a tier or a tower that's in plastic. Some of them  
2 come actually individually wrapped. I guess that just depends  
3 on what vendor they got the cups from. And they have to be  
4 there for them to be able to use to get water.

5 Q. And how do you determine whether water is clean?

6 A. By visually looking inside of the actual -- the actual  
7 cooler or actuating the water and taking a visual inspection.

8 Q. Let's look at checklist Item No. D. Is there signage  
9 indicating water is potable. I think that's how you say it.

10 Potable.

11 How are you evaluating for this subsection?

12 A. I'm look for that sign it's physically -- they can either  
13 post it by stencil. They can put it on a placard. They can  
14 put it on a piece of -- an 8-by-10 and then post it to  
15 whatever water source it or right near or right above the  
16 water source, but it has to be there.

17 Q. 5e, adequate temperature control and ventilation.

18 What are you -- how do you evaluate whether something is  
19 at adequate temperature?

20 A. I -- I -- I've had my section purchase -- well, they  
21 actually -- they did buy me thermometers, and they went and  
22 got a camera for me to do this job that we're doing. So what  
23 I do is I have a thermometer, one that when I go into the  
24 room, I go to where the inlets and the outlets, vents that  
25 push the air, and I take a sample. And then I'll turn the

1 system on. I'll look to see what it is coming in the inlet,  
2 then I'll go to a median spot in the room and I'll set my wand  
3 down so it's taking an ambient temperature while I go through  
4 my process of checking, doing all my other checks that are  
5 listed in section 5.

6 Once I'm done with that doing those checks, I'll grab my  
7 thermometer and I'll take the reading from that thermometer,  
8 and I'll write it to the corresponding number for the room  
9 that I was in.

10 Q. What would be an adequate temperature for a given hold  
11 room?

12 A. Based on the checklist that was from the Flores Reno  
13 settlement that we absorbed into this checklist, from 66  
14 degrees to 80 degrees is the actual temperature range that the  
15 rooms are supposed to be in. But there's a caveat to that as  
16 far as the posture that we're taking with it. If 66 degrees  
17 is the coldest it can be in that room, if it's 67, we might  
18 want to look at warming it up a little bit because the body  
19 doesn't distinguish. Just like 80 is the high, if it's 79,  
20 it's still a little warm, we might want to look at bringing it  
21 down. And I'll actually identify that.

22 Q. When you say you'll actually identify that, do you mean  
23 it will end up in your after action report?

24 A. It won't end up in a report because it hasn't exceeded  
25 the limit, but I need to let the SME know, or the subject

1 matter expert know or I'll ask the question to the duty  
2 supervisor what's he think about that room -- the temperature  
3 in that room. I think it might be a little bit cold or it  
4 might be a little warm. I had one occasion where I asked the  
5 actual SME to ask the actual detainee who was in there because  
6 I don't speak Spanish, was he cold or hot. And he was like  
7 I'm good to go. But I was doing an assessment, so.

8 Q. Let's look at Item 5f, clean mats. It says in  
9 parentheses, all juveniles and adults at 12 hours.

10 How do we -- how do you evaluate for clean mats?

11 A. The -- the mats, the actual support -- the actual support  
12 agency we got for the mats are the contractors. So what has  
13 to happen is we have to have a collection point and an issue  
14 point. The collection point is for any mat that's been used  
15 because now it's going to have to go through the sanitation  
16 process, be dried and be put back on the serviceable line so  
17 it can be reissued.

18 And then there's the actual issue point, which is where  
19 all the clean -- all the mats that went through the process of  
20 them, they are now on the ready line for use. So I go to look  
21 at those mats and look at are they clean. If you put them on  
22 a clean mat pile, they need to be clean.

23 Q. Let's look at checklist Item 5g, maintenance logs.

24 How do you evaluate compliance for that?

25 A. Maintenance -- to try the maintenance logs, what will

1 happen, like, for instance, when I'm actuating the toilets in  
2 the actual rooms or any of the hard parts to the facility, if  
3 the water isn't working or if the toilet doesn't flush  
4 properly or if it continues to run, then I'm -- at that time  
5 is when I'm going to get with the subject matter expert and  
6 I'll probably ask had anybody done any checks through here to  
7 find out if they did any visual inspections themselves, do  
8 they have that as part of their deal.

9 And then I'm going to ask if I can see the actual manager or  
10 the appointee who is responsible for submitting work orders to  
11 fix problems with the facilities. And it's at that time  
12 because I know in this particular room this wasn't working,  
13 I'm going to ask to look at the log, try not to give an  
14 indicator of what it is until after I get a chance to look  
15 through the log and he's shown me everything that he has an  
16 active work order in. And then I'll present to him whether or  
17 not what I saw in there is in that work order.

18 If it's in there, I'm going to identify that I did find a  
19 toilet that wasn't working and when I followed up with Triaga  
20 (ph.), a work order had been submitted. And if there wasn't  
21 one, I'm going to point that out and put it in the report as  
22 well.

23 Q. Now, I'm sorry for not asking this earlier, but you said  
24 several times that you'll ask the subject matter expert, you  
25 know, for assistance or, you know, to look at something or

1 evaluate something. Who is the subject matter expert?

2 A. Nine times out of ten or ten times out of ten, to be  
3 honest with you, the subject matter expert is a Border Patrol  
4 agent that is assigned to the holding facilities. And he is  
5 part of the processing team which they use to process all of  
6 the detainees.

7 Q. Does the Border Patrol agent who is the subject matter  
8 expert, does he know that you're coming to do a compliance  
9 evaluation ahead of time?

10 A. He knows that we're coming once a quarter, but he has no  
11 idea when we're going to show up.

12 Q. Do you give the person, the subject matter expert any  
13 notice before you come?

14 A. Negative, ma'am, no.

15 Q. All right. And last, I want to talk to you about  
16 checklist Item No. 5h. Reasonable accommodations for sleeping  
17 mat adherence.

18 Now, before we go into how you evaluate compliance, can  
19 you explain to the Court what you mean by reasonable  
20 accommodations for mats, for sleeping mats adherence?

21 A. Yes. My superiors, I want to say it was late spring,  
22 early last year, my superiors wanted to go out and look at the  
23 actual how many mats, sleeping -- I would say they wanted to  
24 make an assessment on how many mats can go into a room on the  
25 floor that would still -- that would -- that that room could

1 reasonably accommodate without it becoming a hazard as far as  
2 hygiene or some type of safety hazard where someone could get  
3 stepped on inadvertently or they can be sleeping right by a  
4 doorway. If someone opens a door, the door could hit a person  
5 and things of that nature.

6 So what happened is they came out, they set the mats  
7 down. During our compliance evaluation, they brought a bunch  
8 of mats. They got with the holding facility processing agents  
9 to lend a hand as far as helping shuffling mats in and out.  
10 They set them down, configured them out different ways to look  
11 to see how many could actually fit. Because the thing that  
12 you have -- well, I'm not going to say that you have to  
13 understand, but what it is is that each room when it was  
14 designed, it was designed to hold X amount of people. And the  
15 engineers or the architects said this room can fit this amount  
16 of people. Well, that amount of people doesn't equate to the  
17 same amount if you lay them down. So they had to figure out  
18 how many could you actually lay down in here and it be  
19 considered adequate, you're not overcrowding them or causing a  
20 hazard.

21 Q. Is there a specific or set number of mats for each room?

22 A. Yes. They came up with a number and they made a chart  
23 for each one of the stations, for each holding room in each  
24 one of the stations. They made a chart. And they put that  
25 number on that chart, and that chart is one of the items I

1 have in my clipboard when I go out to do my assessments.

2 Q. How do you determine whether a station is meeting the  
3 reasonable accommodations standards for sleeping mats?

4 A. Physically checking and looking and doing a count.

5 Q. And overall, based on your experience since June 2018,  
6 would you say that most stations have been compliant with the  
7 subsections in checklist Item No. 5 during your compliance  
8 evaluations?

9 A. Yes, ma'am. I would.

10 Q. Let's look into checklist Item No. 6. And we're going to  
11 stop at 8 because after 8, it goes into things that are not  
12 necessarily specific to the hold rooms.

13 So let's look at checklist Item No. 6. Does your  
14 location have a process in place to ensure that juveniles are  
15 offered food and liquids at appropriate times.

16 Now, this is also broken up into four sections, but let's  
17 go through it generally. What are you looking for generally  
18 to determine compliance -- to determine compliance for  
19 checklist Item No. 6?

20 A. I look at the actual setup for the process itself. Based  
21 on being fed upon arrival, that means you're going to provide  
22 some type of snack or a meal when they come in. So in order  
23 to do that, the embarkation area will be coming in through the  
24 sally port. Their personal property being collected and  
25 tagged and stored for later reclaiming it. Then they're going

1 to go in and they're going to be checked for security and make  
2 sure they're not introducing contraband into the actual  
3 facility.

4 Once they come through the next area, the next area is  
5 going to be where they'll start receiving the amenities that  
6 we're going to give them as they go up towards the desk to be  
7 processed into e3DM. It's at that time where one of the best  
8 practices that I was able to identify at one station where the  
9 actual agents -- because in e3DM, each one of the items has a  
10 check. Right. The agents for the -- for meals and snacks,  
11 for instance. The agents will have to check off each thing  
12 that they get. Well, what they decided to do which was really  
13 smart, was they took some one gallon Ziploc freezer bags and  
14 they took a cup, toothpaste, toothbrush, the paper shower,  
15 mylar blanket, crackers, juice, and they put them all into  
16 this one bag and they called it an intake kit.

17 So once -- when the detainee comes in, they hand them an  
18 intake kit and they grab their mat, they know they've provided  
19 food and what have you. At the same time, right at the actual  
20 processing stations, there's a cart that -- I don't think I've  
21 ever went and I didn't see a cart sitting out on the floor to  
22 be honest with you. The cart sits right out there and  
23 that's -- has juice and crackers on it so that the children,  
24 because they do have, like, rooms where they have juveniles  
25 in. And they'll have the doors open sometimes so they can

1 come out and take what they want. And there's a big sign that  
2 they have on the cart as well as at various places in the  
3 actual holding facilities that says these amenities will be  
4 provided upon request or you can have them. Take right here.  
5 It's like free issue. And so they will get their -- the items  
6 that way.

7 So that's the way that I'm seeing that they're getting  
8 what they are getting physically. And then, of course, we're  
9 validating that through the documentation of it in the e3DM  
10 from the lead evaluator.

11 Q. You talked about snacks and toothbrushes and paper  
12 showers. One of the checklist items on here, though, is 6D.  
13 Baby formula and toddler food properly stored and labeled.

14 A. Right.

15 Q. How are you evaluating for that?

16 A. Yeah, the baby food and toddler food isn't put inside the  
17 intake kit for obvious reasons. 100 percent, everybody  
18 doesn't have a toddler or a baby when they come in. They're  
19 usually kept inside the actual pantry area or whatever it's  
20 designed to set up as a kitchen or the dry storage area, which  
21 they can go in to access where they keep these things on the  
22 shelf.

23 When you go in there to look at, for instance, the baby  
24 food, the toddler food, it's broken down in stages. And that  
25 was another best practice that we took that we identified at

1 one station that we shared with the other stations so they can  
2 adopt those practices while we get everything standardized to  
3 make sure everything is running, the continuity is good.

4 Excuse me. So what happens is, for instance, the baby  
5 food, you're going to have different stages of baby food. We  
6 have the Gerber baby food that will be in a jar that's pretty  
7 much all blended up. Then you've got food that a toddler can  
8 eat, which might be like a little dinner tray. Then you have  
9 baby formulas like the Similac. And then you also have milks,  
10 like a shelf milk like the baby -- toddlers can drink. So  
11 it's like in different stages they're different ones. But I'm  
12 looking to make sure that, you know, they're in compliance as  
13 far as shelf life and that they can be served to them because  
14 they're good to go.

15 Q. Based on your experience since June 2018, would you say  
16 that the stations that you've evaluated have for the most part  
17 been compliant with checklist Item No. 6?

18 A. Yes, ma'am.

19 Q. Let's look at checklist Item No. 7. Does the location  
20 have a process in place to ensure that juveniles are offered  
21 showers, soap, clean towels, and basic hygiene products upon  
22 arrival?

23 A. Yes.

24 Q. What are you looking for generally to determine whether  
25 or not a station is compliant with checklist Item No. 7?

1 A. I look to make sure that those amenities are provided.  
2 If you don't, if they don't have a dedicated shower or a  
3 built-in shower room, then paper towel showers need to be  
4 provided. There is also a timetable that's in the e3DM module  
5 where if an individual has been in custody after -- to a  
6 certain amount of time, you are to take them to a facility  
7 that does have a hard shower that they can use. When I say a  
8 hard shower, I mean a fixed facility shower, a real standard  
9 shower, not just an interim contingency type of thing.

10 Q. So is part of the -- is part of evaluating checklist Item  
11 No. 7 a visual inspection that you're doing?

12 A. Yes, ma'am. As well as the lead evaluator doing an e3DM  
13 inspection because of an individual has been in custody at a  
14 certain hour amount, they need to have been taken or  
15 transferred to a facility where they can use the shower and  
16 then be brought back.

17 Q. How are you determining 7C, all diaper -- are all sizes  
18 of diapers available?

19 A. I'm not a -- I don't have any children, but what I do is  
20 I look at the actual box itself and usually the box will tell  
21 you, diaper for a baby from newborn or they'll go from one to  
22 three months or three to five or they'll have different sizes  
23 for the diapers. So I'll look at that.

24 And then as well, I'll look to make sure that that is  
25 free of pests because we don't want a pack rack to go make a

1 nest in the diaper box. So we make sure that everything is  
2 being kept clean and it's not exposed to any kind of outside  
3 influences, so to speak.

4 Q. Last but not least, let's look at checklist Item No. 8.  
5 Does the location afford privacy for showering, performing  
6 bodily functions and changing clothing outside the view of the  
7 staff of the opposite gender.

8 How do you evaluate compliance for checklist Item No. 8?

9 A. I do that through physical visual inspection as well.  
10 One, when I'm in the control room and I'm looking at the video  
11 surveillances, that -- once I identify they are working, that  
12 every area that has a latrine area which you would consider to  
13 be a privacy area for a person to have the -- have the bodily  
14 functions, that it's pixelated so no one can be -- can view  
15 them from the opposite -- from the -- the opposite gender  
16 isn't just sitting back, can see them.

17 Second, if the facility has a shower, of course you need  
18 to have some curtain or some type of blockade or some type of  
19 blind so you cannot -- people just walking by cannot watch a  
20 person shower. They are afforded a level of privacy in that  
21 regard.

22 If they're at -- if they're going to use a paper towel  
23 shower, that they -- that the station itself provides or sets  
24 up a room where they can provide a privacy curtain or some  
25 level of privacy where this individual is away from wandering

1 eyes, for lack of a better term, so they can go ahead and  
2 properly care for themselves.

3 Q. Based on your experience since June 2018, would you say  
4 that most of the evaluations you've completed have shown that  
5 stations have been compliant with checklist No. 8?

6 A. Yes, ma'am.

7 Q. And how about checklist No. 7? I apologize, I didn't ask  
8 this earlier, but would you say in your experience since June  
9 2018, that most stations have been compliant with checklist  
10 Item No. 7?

11 A. Oh, yes, ma'am. Yes, ma'am.

12 MS. MASETTA-ALVAREZ: Okay. Ms. Kershaw, you can  
13 take this exhibit off the screen. Thank you.

14 BY MS. MASETTA-ALVAREZ:

15 Q. Mr. Alexander, earlier you talked about how you do some  
16 after action reports. What is an after action report?

17 A. An after action report is a memoranda, you know, what  
18 most people know as a memo. It's a memoranda that I write  
19 down what it was that we did and when we did it. It's like a  
20 record, a physical record of this inspection taking place, the  
21 things that were observed, to what extent were they observed.  
22 Were they -- was it satisfactory, unsatisfactory, what have  
23 you.

24 And I document this in the memoranda and then I route it  
25 around to the chief because I'm writing the memoranda on

1 behalf of the sector chief going back to the actual patrol  
2 agent in charge of the station whose facility was evaluated by  
3 myself and the lead evaluator.

4 Q. Okay. If I showed you one of the after actions report,  
5 would you recognize it?

6 A. Yes, ma'am.

7 MS. MASETTA-ALVAREZ: Ms. Kershaw, if you could  
8 please pull up joint Exhibit No. 840. And Ms. Kershaw, will  
9 you please go to page 2 of Exhibit 840. Thank you.

10 BY MS. MASETTA-ALVAREZ:

11 Q. Mr. Alexander, what is this?

12 A. This is an after action report for an inspection that I  
13 did at the Tucson Coordination Center.

14 Q. And is this typical of the after action reports that  
15 you -- that you write after your compliance evaluations?

16 A. Yes, ma'am. This is the standardized format.

17 Q. Are these after action reports a regular practice of the  
18 compliance evaluations?

19 A. Yes, ma'am, it's a standard practice.

20 Q. And again, are the compliance evaluations a regular  
21 practice of the Tucson Sector?

22 A. Yes, ma'am.

23 Q. Are you a person with knowledge -- would you consider  
24 yourself a person with knowledge to make these kinds of after  
25 action reports?

1 A. Yes, ma'am.

2 Q. And do you make these after action reports at or near the  
3 time of the -- of the compliance evaluation?

4 A. Yes, ma'am.

5 MS. MASETTA-ALVAREZ: Your Honor, defendants move  
6 Exhibit 840 into evidence as a business record.

7 MR. LONDEN: No objection, your Honor.

8 THE COURT: It's admitted.

9 (Exhibit 840 entered into evidence.)

10 MS. MASETTA-ALVAREZ: And, your Honor, there are  
11 many of these that defendants would like to admit into  
12 evidence. I think it would be quite a waste of the Court's  
13 time to admit them one by one since they do, as Mr. Alexander  
14 testified, one each quarter for each station. We would like  
15 to show these from beginning 2017 per your ruling I believe  
16 two days ago that things after 2017 would be -- you would  
17 consider relevant for the purposes of present day conditions.  
18 And for that, I ask that defendants would also request to move  
19 Exhibits 840 through 847 -- I'm sorry, we have 840 in already.  
20 We would like to move 841 through 847 and joint Exhibit 738  
21 into evidence as well.

22 THE COURT: Mr. Londen, apparently those are all  
23 similar compliance reports, different quarters or different  
24 facilities, I guess.

25 MR. LONDEN: We won't have an objection to their

1 coming in. They are regularly kept records.

2 THE COURT: All right. They're admitted.

3 (Exhibits 841 through 847 and 738 entered into evidence.)

4 MS. MASETTA-ALVAREZ: Thank you.

5 BY MS. MASETTA-ALVAREZ:

6 Q. All right. Mr. Alexander, I'd like to talk about what's  
7 in front of us, joint Exhibit 840.

8 Now, who -- who was this memo from? I'm sorry, who is  
9 this memo from?

10 A. The memo is from the chief agent of Border Patrol sector.  
11 Chief Villareal. I'm sorry. I apologize. I messed his name  
12 up.

13 Q. It's okay. And who is this memorandum for?

14 A. It's to go to Mrs. Davison, who is the acting chief  
15 patrol agent over the facilities.

16 Q. Now, would the person for whom the memorandum -- I'm  
17 sorry, would the person whom the memorandum is for change  
18 depending on what station is being evaluated?

19 A. Yes. In this particular case, Mrs. Davison was wearing  
20 two hats. But she would be over the -- over the TCC as well  
21 as performing that duty as an acting assistant patrol chief  
22 according to this -- for this memo purposes.

23 Q. And if you do a compliance evaluation, say, for Nogales,  
24 would the memorandum be for the chief patrol or the assistant  
25 chief patrol agent of that particular station or the patrol

1 agent in charge of that particular station?

2 A. Yeah, I just -- just to get it straight. It would be for  
3 the -- what we call the PAC, which would be the patrol agent  
4 in charge of that station. Yes, that would be it.

5 Q. All right. And what's included in this memorandum? What  
6 are you discussing in this memorandum?

7 A. In the memorandum I'm discussing the actual inspection of  
8 the holding facility, why we were inspecting the holding  
9 facility, which basically for the care and welfare of our  
10 detainees. And then I will go into the actual areas that were  
11 evaluated and the outcome of those evaluations. I will go  
12 into if, for instance, there were -- if there was a write-up  
13 from the previous inspection, I would have that item reposted  
14 in this memorandum because I'm going to revisit it to see if  
15 they took corrective actions to fix that issue.

16 And then I'll also put in if there -- sometimes when I go  
17 down to stations, they may not have any detainees. So there  
18 would not be a reason to put in the actual reasonable  
19 accommodations write-up because there was nothing to evaluate.  
20 But if there was something to evaluate, that's when I would  
21 put that in and so forth and so on. Of course, e3DM. And  
22 then the other items that are on the checklist.

23 Q. Are there any attachments to this memorandum?

24 A. Yes, ma'am.

25 Q. What are those attachments?

1 A. Usually I will attach pictures of the actual facilities  
2 or the areas that I evaluated in the actual state that I found  
3 them in, be it whether it's satisfactory or unsat, I'm going  
4 to take that picture.

5 I'll attach -- if there was a best practice that came out  
6 that I thought should be warranted that should be shared with  
7 the sector and that my bosses should know about, I put that  
8 down as an attachment. And basically that's it.

9 MS. MASETTA-ALVAREZ: Ms. Kershaw, will you go down  
10 two pages? Thank you.

11 BY MS. MASETTA-ALVAREZ:

12 Q. Mr. Alexander, what are these?

13 A. Those are pictures of the actual facility and the areas  
14 that I actually saw or I more than likely wrote about in the  
15 memorandum report so I get a visual with the literary portion.

16 Q. And why are you taking pictures to be included with your  
17 memorandum?

18 A. I'm doing it as record and also as a form of transparency  
19 and also to show that based on my -- what I thought was  
20 acceptable or being serviceable, you can see it, it's clear,  
21 it's clear, it's not ripped, it's not damaged. Or it is  
22 ripped, it is damaged and this is how I saw it and this is --  
23 and I'm showing it to you or to the -- to the sector -- to the  
24 sector. Excuse me.

25 MS. MASETTA-ALVAREZ: Ms. Kershaw, will you go down

1 one more page? And go down one more page. One more.

2 BY MS. MASETTA-ALVAREZ:

3 Q. Mr. Alexander, what, is this an attachment as well to the  
4 memorandum?

5 A. Yes, it is.

6 Q. What is this?

7 A. Well, actually, it's an attachment to the folder itself.  
8 What it is, this is the e3DM audit memo from the lead  
9 evaluator. Once he went back and all of the information that  
10 he harvested from e3DM or the detention module, he'll go back  
11 and he'll write a synopsis of everything that he had looked at  
12 and what the finding was on that item. Then he'll e-mail that  
13 to me.

14 I will take this document in real-time, I'm going to put  
15 it in a folder so it accompanies my checklist as well. And  
16 I'm going to take what verbiage that he used in the actual --  
17 in his memo to me to describe what he found. And then I'm  
18 going to get on the phone with him and verify that once I  
19 transfer the information over, do I need to transfer it over  
20 verbatim or should I write it in the flow of the package that  
21 I got. Like, if it was -- for instance, there was no finding  
22 and he had no discrepancies noted, they're doing a good job,  
23 so forth, so on. Then if I already have a packet already  
24 during this inspection time period there were actually no  
25 findings for this -- for this time period over these events

1 that was evaluated, those are the numbers that I'm harvesting  
2 from his report to me. So I don't necessarily have to cut and  
3 paste it.

4 I'll verify that I'm -- am I interpreting this right, am  
5 I writing this right. And then I'll let him take a look at it  
6 or she take a look at it and then they'll let me know, yeah,  
7 you hit the nail on the head. And then I'll go ahead and add  
8 it so it supports what I put in the memo. And it's in the  
9 folder as supporting documentation.

10 MS. MASETTA-ALVAREZ: And, Ms. Kershaw, would you go  
11 down one more page. Okay.

12 BY MS. MASETTA-ALVAREZ:

13 Q. What is this, Mr. Alexander?

14 A. That's the actual audit snapshot that I believe it was  
15 Agent Kaison gave me for that inspection on that particular  
16 day for the Tucson Coordination Center.

17 Q. Now, in the second paragraph on this page, it says: To  
18 conduct the audit a random sample group of 30 detainee records  
19 from 30 different e3 events starting from the date of the  
20 previous audit, September 3rd, 2019, to the date of the  
21 current audit, October 17, 2019, were queried. Is it typical  
22 to the best of your knowledge that a -- that the lead  
23 evaluator or Border Patrol agent would do a random sample of,  
24 say, 30 e3 events?

25 A. Yes, it is typical. There were -- I've seen more and

1 I've seen less. We've increased the number from what it was  
2 in the past. We went I think from 14 to 15 randoms across the  
3 board. Because one event, for instance, for those that may  
4 not know, one event item may have 50 people in that event.  
5 And each one of those individuals are going to have the exact  
6 same requirement individually that the group has collectively.

7 So if there was 50 people in one event, there are 50  
8 meals, at least one has to be -- I mean, not at least one, has  
9 to be inspected. There is 50 people in one event. So if you  
10 times that about how long those people have been there, he's  
11 checking each one of those for the time period that they were  
12 there to make sure they were all satisfactory.

13 So we went from 15 events to 30. So to get a wider  
14 swatch and to try to get closer to identifying any problems  
15 that we may not see based on the swatches that we took in the  
16 past.

17 Q. So Mr. Alexander, just to clarify, you're saying that  
18 each event in e3 might have several individuals in it?

19 A. Might have several individuals in it, a large group.  
20 Sometimes they could be small, sometimes they could be a large  
21 group or contain more than one group of families. It just --  
22 it really depends on how they were received, I guess. I don't  
23 know. But I think that's what I'm making an assumption on  
24 that part.

25 Q. Now, Mr. Alexander, again, we're looking in the second

1 paragraph, the last sentence, I apologize.

2 A. Yes, ma'am.

3 Q. It says that no discrepancies were identified in any of  
4 the 30 sampled events. Do you know what that means?

5 A. That means he did not find any infractions that would --  
6 that would go against whatever the posted policies are. When  
7 I say the posted policies, again, I'm referring back to those  
8 four items that we have. We make sure they're keeping in the  
9 book. Any type of injunction orders that we had. When I say  
10 injunction order, let me take that back. When I say  
11 injunction, there were some things that I saw in the Jane Doe  
12 audit that were items that I highlighted that we need to look  
13 at in particular. And I believe they had something to do with  
14 the mats and it was like two or three items. And I can't  
15 recall right off the top of my head. But I highlighted them  
16 to make sure that we had a standard for making sure that they  
17 were satisfactory and that we were -- I'm not -- the word  
18 aggressively is not what I'm -- we were actively in pursuit to  
19 make sure that we were -- we were in compliance with those  
20 suggestions or mandates from the Court.

21 Q. Okay. I want to talk about this word deficiency. What  
22 does the word deficiency mean in one of your compliance  
23 evaluations?

24 A. Yeah, deficiency, discrepancy, findings, a lot of that  
25 I'll -- I take as my -- if there's -- if there's a problem

1 with definition, it will be it's because I'm using language  
2 that I was accustomed to using as a compliance inspector in  
3 other places. A discrepancy means it's not the way it's  
4 supposed to be. It's a finding or a write-up. Right?

5 A deficiency would be it's not up to par. Same thing.  
6 And I would use those -- those terms. And I know what I mean  
7 and I hope I didn't use a term that wasn't accurate enough,  
8 but I was trying to drive -- hit that nail from different  
9 angles to let you know we're standing on point when we're  
10 posting what we're supposed to be doing.

11 Is that what you mean, is it like a clarification deal?

12 Q. Yes. We'll get into in just one second.

13 MS. MASETTA-ALVAREZ: Ms. Kershaw, if you could just  
14 take -- yes, thank you. And if you could go again to page 2  
15 of the document. Thank you.

16 BY MS. MASETTA-ALVAREZ:

17 Q. Now, we were just talking about discrepancies and  
18 deficiencies. If you found that a particular station was not  
19 compliant with one of the sections of the compliance checklist  
20 that we were looking at earlier, would it make it into this  
21 record?

22 A. Yes, ma'am.

23 Q. Is there --

24 A. If it's a checklist item, it can make it into this  
25 report, yes, ma'am.

1 Q. Is there ever a time that you would find something that  
2 was not compliant with the checklist that might not make it  
3 into this report?

4 A. Yes, ma'am. I've had that happen. Item like the clean  
5 mat area. The mats had been washed. They were put out to the  
6 drying stage. After they dry, they go in to the clean mat  
7 area so they could be issued back out. Well, in this  
8 particular station, they chose to hang a paper sign like an  
9 8-by-11 above the mat station that says clean mats. And the  
10 paper fell down. It was there, but it was behind the mats on  
11 the wall on the floor.

12 So when I walk in, I notice it's the clean mat room  
13 because it says clean mat room on the door, but the sign above  
14 where the mats are is not there. So I'm like you don't have  
15 the clean mat sign posted up there and they ran and made one  
16 and stuck it up there. And then they found the one that was  
17 originally had fell on the floor. So I didn't write that up.

18 Q. And why didn't you write something like that up?

19 A. It didn't directly have any affect on our detainees. If  
20 the -- if there's something that directly affects detainees,  
21 it's going in. Sorry. I mean, it is what it is but it's got  
22 to go in.

23 Q. So let me give you an example.

24 A. Yes, ma'am.

25 Q. If you went into a particular station and you were

1 looking at the reasonable accommodation for mat capacity.

2 A. Yes, ma'am.

3 Q. And you saw that the mat capacity on the wall was nine?

4 A. Yes, ma'am.

5 Q. And you go into that room and you see that there are 13  
6 mats on the floor?

7 A. Yes, ma'am.

8 Q. Would that finding make it into the report, even if at  
9 that moment in time the agents were able to, say, move four  
10 people to another room?

11 A. Yes, ma'am. Not only is it going to go into the report,  
12 but the posture that I have from my leadership is that if it's  
13 above, it's elevated directly to the duty sup, the watch  
14 commander or whoever is delegated or directly to the DPAC or  
15 the PAC himself, DPAC being deputy patrol agent in charge or  
16 the PAC, the patrol agent in charge.

17 Because from my understanding, as leadership, they have  
18 come up with certain types of contingencies of postures  
19 they're going to take if they hit thresholds or exceed them or  
20 what have you. And whatever internal corrective actions  
21 they're going to take, I'm not privy to, but I'm going to  
22 elevate it. And again, primarily because it has a direct  
23 impact.

24 I'm there, no notice. So because of no notice, that  
25 means that this situation was existing and now you're fixing

1       it because I'm saying something about it or should you have  
2       clicked and you taken appropriate actions to get that taken  
3       care of at the lowest level.

4       Q.     And just to clarify, would a discrepancy like that, like  
5       finding something above the reasonable mat accommodation,  
6       would that make it into this report?

7       A.     Yes, ma'am.

8       Q.     Signed by the chief patrol agent?

9       A.     Yes, ma'am, it would.

10      Q.     Let me give you one more example just to clarify where  
11       that line exists.

12       Let's say you go into the pantry area and you're looking  
13       at baby formula, and you see that one of the baby formulas is,  
14       you know, three days expired. And if the agent were to say,  
15       oh, I can take that down, throw it away and it's all good,  
16       would that be something that would make it into the report,  
17       the fact that that was expired?

18      A.     Absolutely, ma'am. Yes.

19      Q.     Why is that?

20      A.     Because it directly impacts. And not only that, it's  
21       something that we're going to -- we could have easily been  
22       provided to a detainee and it is -- and it's past the shelf  
23       life. We can't have those type of things. It's just -- don't  
24       mean to get all personal about it, but it's -- it's -- it's a  
25       human rights thing. You've got to take care of those who

1 can't take care of themselves. It's just what it is.

2 Q. So that would make it into this report, signed by the  
3 chief patrol agent?

4 A. Yes, ma'am.

5 Q. I want to talk to you about what happens after you send  
6 this report out to the patrol agent in charge. Has there ever  
7 been a time that you're aware of where a patrol agent in  
8 charge has responded to a finding or a deficiency that was  
9 identified in one of these after action reports?

10 A. Yes, ma'am. It's twofold when we get responses from  
11 patrol agent in charge or whoever that delegate might be. One  
12 is at the outbrief. Once we're finished with our inspection  
13 from when we show up, we also do a debrief with the patrol  
14 agent in charge so they -- and all those that were involved so  
15 they know what's coming out, what the overall health was and  
16 what they can expect coming down from the memoranda. And if  
17 there's any actions that they want to take on their own,  
18 they've got time to start before they talk to their superiors  
19 or what have you.

20 And then the second one is once the memorandum -- the  
21 memo goes out, after it's been routed through the chief and  
22 all of the section heads to look at it at headquarters, then  
23 it's sent out to sector so they all have a record of it. It's  
24 at that time that the second -- that's the second opportunity  
25 where the patrol agent in charge who may have pointed out --

1 for instance, there was one in October, you know, we had where  
2 they would respond back to us. And state this is what for  
3 that finding on this particular day, we went out and did  
4 further investigation, i.e., something wasn't logged in e3DM.  
5 And they went back because they can do another -- there's  
6 another way to find out whether the action took place and they  
7 go back and they do their research.

8 Q. So is this something that actually happened recently?

9 A. Yes, ma'am.

10 Q. What station was it at?

11 A. It was at Willcox station.

12 Q. What was the finding that was in the report that they  
13 reacted to?

14 A. It was a finding that during the -- it was the lead  
15 evaluator found -- it was a meal that was missed or not  
16 documented. But because it was not documented in e3DM or  
17 properly logged or whatever it is that they do in it to  
18 reflect it, we have to take the posture that if you didn't  
19 document it, it didn't happen. So when we back briefed that  
20 to the Willcox PAC, the Willcox PAC had said unequivocally --

21 Q. I'm sorry. By PAC, do you mean patrol agent in charge?

22 A. Patrol agent in charge is the PAC. Excuse me, I'm sorry.  
23 I did that again. I apologize.

24 They said unequivocally this is not going to be taking  
25 place. So the PAC -- because we gave the outbrief and then,

1 of course, the report came out, during that time frame, the  
2 PAC directed her -- it was Ms. -- yeah, directed their  
3 leadership to go in and it didn't matter how long it took to  
4 get into the videos and look at those videos for that event  
5 number and identify each time that individual had been given a  
6 meal and verify it and then get back with them. Because  
7 they're going to respond to this finding with either they did  
8 or they did not. But they're going to make sure that due  
9 diligence is taken to make sure it doesn't happen again.

10 And I -- that's the impression that I got from it. And I  
11 wound up writing the amended memo because the PAC sent a memo  
12 to my office stating they found it and they have the  
13 supporting information for visual checks and what have you. I  
14 wind up going out -- I was out of medical for a little bit.  
15 When I came back, I got -- I saw the memo and I wrote it when  
16 I -- I saw where they -- where the PAC had written it and it  
17 was validated by my boss. So I wrote an amended memo to state  
18 that that finding was -- it was a finding because of operator  
19 error or oversight as far as logging, but that meal was  
20 provided and then I pushed it out to the sector.

21 MS. MASETTA-ALVAREZ: Okay. One second to confer  
22 with co-counsel.

23 THE COURT: Yes.

24 MS. MASETTA-ALVAREZ: No further questions for  
25 direct examination.

1 MR. De GANON: No questions, your Honor.

2 THE COURT: Oh. All right.

3 THE WITNESS: Sorry, my head is shining.

4 THE COURT: I understand the problem.

5 Mr. Alexander, thanks for coming in and talking to us.

6 THE WITNESS: Sir?

7 THE COURT: Thank you for coming in and talking to  
8 us. You may be excused.

9 THE WITNESS: Thank you, sir.

10 MS. MASETTA-ALVAREZ: Your Honor, should we take a  
11 short recess or do you want to move on to the next witness?

12 THE COURT: Let's move on.

13 MS. MASETTA-ALVAREZ: Okay.

14 THE COURT: For a while.

15 MS. MASETTA-ALVAREZ: All right. Defendants call in  
16 Bradley Davis.

17 BRADLEY DAVIS, DEFENSE WITNESS, SWORN

18 THE CLERK: Thank you. Please be seated. And if  
19 you then state your full name and spell your last name.

20 THE WITNESS: Bradley S. Davis. D-a-v-i-s.

21 THE COURT: Go ahead, Counsel.

22 DIRECT EXAMINATION

23 BY MS. MASETTA-ALVAREZ:

24 Q. Good afternoon, Mr. Davis.

25 A. Good afternoon.

1 Q. Please introduce yourself to the Court.

2 A. I am Bradley S. Davis. I'm the director of policy and  
3 compliance at the Tucson Sector headquarters here in Tucson.

4 Q. Are you here to testify about your experience as the  
5 director of policy and compliance?

6 A. Yes.

7 Q. Mr. Davis, I want to talk to you about your background  
8 and educational history. In what city do you live?

9 A. I live in Oro Valley, which is a bedroom community north  
10 of Tucson.

11 Q. Okay. Mr. Davis, if you don't mind talking into the  
12 microphone so that we can hear you.

13 A. I like to see.

14 Q. Perfect. Okay. I'm sorry, where did you say that you  
15 live?

16 A. I live in Oro Valley which is just north of Tucson.

17 Q. It's hard for me to hear you. Do you mind pulling the  
18 mike a little bit closer to you? That should be better.

19 All right. Have you always lived in the Tucson area?

20 A. No. I've lived here only since June of 2018.

21 Q. What brought you to the Tucson area?

22 A. To accept the position that I currently hold.

23 Q. Okay. And you said you're not from around the area.  
24 Where did you go to high school?

25 A. I was born and raised in southern California and went to

1 high school in Garden Grove, California and then attended  
2 UCLA.

3 Q. Okay. And did you graduate from UCLA?

4 A. Yes, with a bachelor of arts in history.

5 Q. Did you ever obtain a master's degree?

6 A. Eventually from UCLA I was commissioned a second  
7 lieutenant in the Air Force and went on active duty. And  
8 during my time on active duty, I obtained a master of science  
9 degree in organizational behavior and human resource  
10 management.

11 Q. Okay. Have you had any specific training in compliance?

12 A. Yes. In a number of locations. The first formal  
13 training that I received in compliance had to do with my  
14 position, my last job in the military where I was an inspector  
15 under the arms control or in arms control under the  
16 conventional forces in Europe treaty and I was stationed in  
17 Europe for that. I was a team chief and received about  
18 three months of formalized training, which included two weeks  
19 of training at the NATO school in Oberammergau, Germany on  
20 inspection capabilities, processes, rights, what have you.  
21 And after that I had to certify with my division chief.

22 At that point when I went out on inspections, I could  
23 speak formally for the United States government in regards to  
24 the treaty.

25 Q. Have you received any certificates or awards?

1 A. Other than course completion certificates, I received a  
2 number of military awards. However, during my time after my  
3 military career, I became a civilian working for DOD for five  
4 years.

5 Q. I'm sorry, DOD, when you say that?

6 A. I'm sorry, the defense department.

7 Q. Okay.

8 A. And then after about five years continuing with the  
9 organization that I was originally with in the military, I was  
10 secunded by the U.S. government to the UN organization in the  
11 Hague, the Netherlands called the Organization for the  
12 Prohibition of Chemical Weapons or OPCW. This is the  
13 organization that inspects under the treaty for chemical  
14 weapons and chemical precursors. During the time that I was  
15 assigned to that organization, that organization was awarded  
16 the Nobel Peace Prize.

17 Q. Were you also extended a Nobel Peace Prize because of  
18 your work?

19 A. I have a certificate saying that I was a member of the  
20 organization that received the award.

21 Q. I'd like to talk to you about your employment history.  
22 Now, before you started as the director of policy and  
23 compliance in the Tucson Sector, what did you do?

24 A. Prior to this position, I worked as the -- a strategic  
25 planner on the staff of the Army logistics headquarters

1 located in Michigan, just north of Detroit.

2 Q. And how many years were you there?

3 A. Four years.

4 Q. Four years. Do you have any other experience in  
5 compliance or inspections?

6 A. One of my first experiences when I was assigned to the  
7 State department and the arms control disarmament agency  
8 portion of the State department where I worked on the  
9 strategic planning and implementation of the START treaty, the  
10 strategic arms reduction treaty between us, the U.S., and the  
11 Soviet Union. Part of that included being assigned to the  
12 negotiating team that was sent to Geneva. I went five times  
13 for the negotiations and working out issues about compliance  
14 to the treaty from all partner states.

15 Q. Okay. Do you have any other experience in compliance or  
16 inspections besides your experience with the Department of  
17 State?

18 A. Other than what I talked about, being in the -- oversees  
19 in Europe, no.

20 Q. And when you say being oversees in Europe, do you mean  
21 the organization for the prohibition of chemical weapons?

22 A. That was part of it. The other one was being assigned in  
23 the military as the team chief to an inspection team. And  
24 then staying there as a civilian when I retired and that  
25 lasted eight years, two years at OPCW. And then I had a

1       stint, a four-year stint working at Africa command in  
2 Stuttgart, Germany and then four years in Michigan and then  
3 coming here.

4       Q. And just to clarify, when you were with the Department of  
5 Defense, I believe it was the Defense Threat Reduction Agency;  
6 is that correct?

7       A. Uh-huh, uh-huh.

8       Q. What was your position title there?

9       A. Initially when I first was assigned to the Defense Threat  
10 Reduction Agency, that was the agency I was assigned to to go  
11 oversees to be an inspection team chief. That organization  
12 has a division directly assigned in Europe to conduct those  
13 types of inspections. Part of the inspection protocol is you  
14 do the inspections into the countries of Russia, Belarus and  
15 Ukraine. And when those countries come to U.S. facilities in  
16 the European theater, I would become an escort team chief  
17 helping to protect U.S. interests in compliance with the  
18 treaty.

19       Q. What years were you working in that capacity?

20       A. From January 2000 until May of 2008 when I moved to the  
21 OPCW and the Hague.

22       Q. Okay. And again, the OPCW is the Organization for the  
23 Prohibition of Chemical Weapons?

24       A. Yes.

25       Q. Okay. And what was your title, your job title there?

1 A. When I was at OPCW?

2 Q. Correct, yes.

3 A. I was the chief of the strategic plans and operations  
4 division.

5 Q. And what did you do as far as inspections went in your  
6 position as chief?

7 A. In that position I was in a support function, I was not  
8 one of the certified inspectors of the organization; however,  
9 I helped to schedule all of the inspection teams from the  
10 organization to do the requirements of the treaty around the  
11 world, which turned out to be about 4- to 500 inspections a  
12 year that were sent out by that organization.

13 Also, I was responsible for the support of the operations  
14 for each inspection. And eventually I became the division  
15 chief while I was stationed there. I did go off on three of  
16 the inspections down to Libya, to oversee the preparations for  
17 the Libyan destruction of their weapons or their chemical  
18 weapons that they had stored out in the middle of the desert.

19 Q. Okay. And do you have any experience in policy  
20 development? Any previous experience in policy development?

21 A. The policy development I -- while I was at the State  
22 department working on START treaty, the Strategic Arm  
23 Reduction Treaty, in a little bit in a previous assignment at  
24 the Pentagon when I started initially working with the START  
25 treaty, I was helping to provide the financial resources for

1 the Air Force across the continental United States for them to  
2 be in compliance with the START treaty.

3 Q. Okay. Now, I want to talk to you about your current  
4 position.

5 You stated earlier that you are the director of the  
6 Tucson Sector compliance and policy department. Can you  
7 please tell us what the purpose of the policy and compliance  
8 department is of Tucson Sector?

9 A. We have a number of responsibilities to the sector and to  
10 the service in its whole. We're responsible for health and  
11 safety issues for all of the agents and professional staff  
12 that are in the field. Making sure that safety notices,  
13 safety items to help people stay safe in the field, hydration  
14 packets, the typical Band-aids and what have you are out with  
15 the individuals in the field to make sure that they're safe.

16 We also involved with -- and I'm personally responsible  
17 for the physical security of all facilities for Tucson Sector  
18 here in Southern Arizona. And finally, we are responsible for  
19 the national level and sector level guidance and policy.  
20 We're the clearinghouse for all of that. We have an archive  
21 of all of the national guidance and local guidance.

22 We interpret, we pass along to the rest of the sector.  
23 We give new guidance that comes down from the headquarters to  
24 the -- whoever is the subject matter expert within the sector.  
25 So that they can take care of implementing that.

1 Q. Does your department also oversee compliance evaluation?

2 A. Yes, as part of our final responsibility, compliance  
3 evaluations is one of the -- one of our major  
4 responsibilities.

5 Q. Okay. And how long has your department, the department  
6 of compliance and policy been in existence?

7 A. I cannot say for sure since I've only been in the  
8 position for 18, 19 months. But I know it was in existence at  
9 least three or four years before my arrival.

10 Q. And how many employees do you have?

11 A. Twelve.

12 Q. Now, is the department of policy and compliance also in  
13 the same division as the operations support of the Tucson  
14 Sector?

15 A. No, it's not. I'm assigned under the mission readiness  
16 operations division, one of the four divisions within the  
17 Tucson Sector. There's operations, operations support  
18 programs, the mission readiness operation -- for the life of  
19 me I can't remember what the fourth one is. Sorry.

20 Q. It's okay. And which of these sections is in charge of,  
21 say, the daily operations of a given sector or of a given  
22 station?

23 A. The operations division is in direct responsibility for  
24 maintaining the operational capability of the stations in the  
25 field to include the formal infrastructure, the agents,

1      whatever they need to do their job. The other divisions are  
2      mainly in a support function.

3      Q.     So would you see that one of -- so would you say that  
4      your division is a support function?

5      A.     Yes.

6      Q.     What are your weekly -- what do your weekly job duties  
7      look like?

8      A.     It involves all of the main functions of the  
9      organization. I oversee who -- my department is broken into  
10     two branches, one for policy, one is for compliance. The  
11     policy side is the side that takes care of security and being  
12     the clearinghouse for national and sector level guidance and  
13     policy. And the compliance branch is obviously the one that  
14     takes care of doing compliance evaluations and also health and  
15     safety. I divide my time between the two branches working  
16     with branch chiefs to take care of daily taskings that come  
17     from within the sector and also from higher headquarters.

18     Q.     Okay. Let's break down those a little bit.

19           So can you tell me what do you, say, on a weekly basis in  
20     regards to the compliance portion of your job?

21     A.     Depending upon the schedule for a particular week,  
22     compliance activities on my part could be reviewing the  
23     schedule that Mr. Alexander develops for doing compliance  
24     evaluations at the stations. Reviewing draft reports from  
25     previous evaluations prior to being signed off by the patrol

1 agent of the sector. Monitoring the coordination of a  
2 formalized report for his signature. Taking a look at any  
3 national guidance that may impact the conduct of compliance  
4 evaluations.

5 Mr. Alexander and I, with our military background have  
6 developed and revitalized the checklist for the compliance  
7 evaluation to make sure that it speaks directly from national  
8 guidance and has references for each of the items on the  
9 checklist and what is required at the stations.

10 Q. And how about your -- the policy part of your job? What  
11 are your, say, weekly job duties in regards to the policy  
12 portion?

13 A. One of the biggest things is the physical security of our  
14 facilities. There are -- there are a number of national level  
15 guidances to say what security is required at our facilities.  
16 And a number of our facilities unfortunately due to resource  
17 limitations do not meet those limit- -- or those directives.

18 And so it's my responsibility to provide intense  
19 research, background and options to the chief patrol officer  
20 so that he can make formal resource allocation at his desire  
21 and his decision to increase security of our facilities.

22 Q. Have you ever assisted in or developed practices or  
23 policies within holding facilities in the Tucson Sector?

24 A. I don't develop policies for that.

25 Q. Okay.

1 A. I just do evaluations of that. I may help in the process  
2 of developing that only to the point of as part of the policy  
3 requirement in my responsibility in my department of making  
4 sure that it's put into the correct format, it's coordinated  
5 correctly and given to the right people for the  
6 implementation. Also if it comes from a national requirement,  
7 that I can provide the interpretation of it for the field and  
8 the stations.

9 Q. Okay. Mr. Davis, were you involved in developing a  
10 reasonable accommodation for sleeping mat capacity in the  
11 stations, in the Tucson Sector stations?

12 A. Yes.

13 Q. Okay. And what is the reasonable accommodation for  
14 sleeping mat capacity?

15 A. The reasonable accommodation is a way or a process of  
16 determining what is the most effective, efficient and humane  
17 way to lay down mats within a holding cell so that we can  
18 maximize the number of mats, but at the same time, provide a  
19 reasonable accommodation for anyone on a mat to get off the  
20 mat and go walk to the personal facilities, the toilets,  
21 without stepping over anyone, stepping on anything. They have  
22 a clear path from their mat to the toilet.

23 Q. Okay. Now, is the sleeping mat capacity, is this a  
24 requirement for a station or is it a suggestion or how would  
25 you describe it?

1 A. It's an internal sector directive that they follow that  
2 number because it was determined by the sector what that  
3 criteria and how it was determined for each holding room.

4 Q. Would you consider that mandatory guidance?

5 A. Yes.

6 MS. MASETTA-ALVAREZ: Okay. Ms. Kershaw, would you  
7 please pull up joint Exhibit 729.

8 THE COURT: Before you get into that, why don't we  
9 take our afternoon recess for 10 minutes? We'll take it up  
10 again at 3:15. We'll be at recess.

11 MS. MASETTA-ALVAREZ: Thank you.

12 (Recess from 3:03 p.m. to 3:16 p.m.)

13 HE COURT: All right. We're on the record. Go  
14 ahead, Counsel.

15 MS. MASETTA-ALVAREZ: Thank you, your Honor.  
16 Ms. Kershaw, could you please pull up on the nonpublic screen  
17 Exhibit 729. And for the record, this is on a nonpublic  
18 screen because it does have certain numbers that cannot be  
19 publicized.

20 BY MS. MASETTA-ALVAREZ:

21 Q. Mr. Davis, do you recognize the document that's on the  
22 screen before you?

23 A. I do.

24 Q. What is it?

25 A. It's a memorandum that my department developed and

1       formatted and had the chief patrol officer sign as the  
2       official designation of mats per holding or per station and  
3       sent out within the sector.

4       Q.     Is the -- is creating memoranda a regular part of your  
5       job as compliance and policy director?

6       A.     Yes. Not only on compliance issues such as this one, but  
7       on a number of issues, health and safety issues, policy  
8       issues, security issues especially. All of these are  
9       developed in this type of template to get the chief patrol  
10      officer to sign as national -- or as sector guidance or  
11      information.

12      Q.     And is -- would you consider yourself a person with  
13      knowledge about the mat capacity numbers in this regard?

14      A.     Yes. I was the team lead at every station that  
15      determined the numbers that are on this memo.

16      Q.     And what's the date on this memorandum?

17      A.     29 May 2019.

18      Q.     Was this memorandum drafted or sent out at or near the  
19      time that you determined the mat capacities for each station?

20      A.     This memo was dated approximately two weeks after the  
21      final station's mat capacity was determined.

22                    MS. MASETTA-ALVAREZ: Your Honor, defendants move  
23      joint Exhibit 729 into evidence as a business record under  
24      Federal Rules of Evidence 803(6).

25                    MR. LONDEN: No objection.

1 THE COURT: Admitted.

2 (Exhibit 729 entered into evidence.)

3 BY MS. MASETTA-ALVAREZ:

4 Q. Now, Mr. Davis, do you see in the middle of the page,  
5 there are each station and then a number next to each station?

6 A. Yes.

7 Q. What is that?

8 A. Those are the specific numbers of mats in cumulative for  
9 all of the holding facilities at that station, and the  
10 combined number of mats that are available for that particular  
11 station. We did not break it down in this memo by holding  
12 room. I did that by a separate e-mail.

13 Q. And without stating the number of the mat capacity for  
14 each station, do these mat capacities generally look accurate  
15 to you?

16 A. Yes.

17 Q. Okay. Mr. Davis, to whom did this memo go out?

18 A. It states at the top that it goes to command staff which  
19 is internal to the sector headquarters; the patrol agents in  
20 charge which are the senior agents in charge at each of the  
21 stations; and the Tucson Sector, any other activity within the  
22 sector that would be involved with compliance and mat  
23 capacity.

24 Q. Who is this memo addressed from?

25 A. It is addressed from Roy D. Villareal, who is our chief

1      patrol agent in Tucson Sector.

2                    MS. MASETTA-ALVAREZ: Ms. Kershaw, can you please  
3 pull up what has been previously admitted into evidence joint  
4 Exhibit 730.

5 BY MS. MASETTA-ALVAREZ:

6 Q. Mr. Davis, do you recognize this?

7 A. Yes. This is an e-mail from myself to the PAC or patrol  
8 agent in charge of Ajo station.

9 Q. What is this e-mail about?

10 A. This is an e-mail that specifies by holding room at Ajo  
11 what the maximum number of mats can be allowed in the room.

12 Q. Does this e-mail contain any attachments?

13 A. Can I see the second page?

14 Q. Certainly.

15                    MS. MASETTA-ALVAREZ: Ms. Kershaw, please go to the  
16 second page. Please go to the third page.

17                    THE WITNESS: It has the photographs that we took  
18 during the determination in each of the rooms. And I took  
19 these photographs.

20 BY MS. MASETTA-ALVAREZ:

21 Q. And how are these photographs organized in the e-mail?

22 A. Hopefully I did it this way, that I took a picture of the  
23 designation of the room, such as 1213, followed by a picture  
24 or picture of the room with nothing on the floor, everything  
25 removed from the facility or from that room. And then finally

1 after we had determined where the mats would be located and  
2 the total number that could be used in that room, I would take  
3 pictures to try to encompass all of the mats and to see how  
4 the layout was determined.

5 Q. Now, let's look at some of these photos.

6 So the first photo, the top photo that's on the screen,  
7 it has a cell number, and underneath it says unprocessed  
8 female holding, and underneath there's a photo.

9 MS. MASETTA-ALVAREZ: And, Ms. Kershaw, if you could  
10 pull up that photo on the screen so it's full size. Thank  
11 you.

12 BY MS. MASETTA-ALVAREZ:

13 Q. Mr. Davis, can you walk us through the process of how  
14 you and your team came to determine this layout for mats?

15 A. The room was completely cleared so that the floor inside  
16 the holding room was free of any object. And then taking the  
17 mats that we use throughout the sector, we started laying the  
18 mats down so that we can find the best effective, efficient  
19 and humane way to lay them down and to maximize the number.

20 The -- going in criteria was they could not touch each  
21 other, although in this particular one it looks like as though  
22 the one on the far right upper side touches a little bit.  
23 Given the capability of the room, a slight touch was not  
24 considered a disqualification. And we tried to maximize the  
25 laydown. I liken it much to a puzzle of trying to move

1 objects within a given space to find the best way of laying it  
2 down. Once myself and my other team members looked at the  
3 final laydown, that's what we decided as the best way to do  
4 it.

5 Q. How did you determine whether there was sufficient  
6 walking space within a given room?

7 A. All members of the team would go from each of the mats  
8 and find the path from that mat to the toilet area.

9 Q. Now, Mr. Davis, looking at this picture, some of the mats  
10 as you stated are close or touching each other. How would an  
11 individual get up off the mat and go find the facility or an  
12 exit?

13 A. We determined that exiting the mat didn't have to come  
14 from the long side. It could occur at the short side so that  
15 an individual on a particular mat, say, the one that's  
16 sticking out just a little bit in the center of the picture,  
17 the individual could leave the mat by coming off the end of  
18 the mat, standing up in the open area right there and then  
19 walking along the pathway to the toilet.

20 Q. And, Mr. Davis, I see kind of in the top right-hand  
21 corner of the photo, it looks like there's one mat going,  
22 excuse me, vertically and then several mats going  
23 horizontally. And there's a corner that looks like it's  
24 almost touching one of the mats. How would a person go over  
25 that corner of the mat?

1 A. By stepping over. We determined that a slight step over  
2 of a corner was insufficient to say that mat should not be  
3 used. Everyone has a tendency to step over a small item on  
4 the floor. It was not a big object that they had to take care  
5 of.

6 Q. Did you determine that it was permissible for people to  
7 step over mats, say, over the middle part of the mat?

8 A. That was not allowed.

9 Q. Mr. Davis, did you use any criteria for placing mats  
10 around the toilet facilities?

11 A. We made sure that no mats went into the area of the  
12 toilet facility for privacy reasons. However, to maximize the  
13 number of mats in the room, some mats were placed somewhat  
14 close to the toilet facility.

15 Q. Why did you determine that that was reasonable?

16 A. Because it helped maximize the number of mats in the  
17 room, but the individual was not necessarily placed in an area  
18 that close to the toilet.

19 Q. You said you didn't place any mats near the toilet  
20 facilities. What do you mean by "near the toilet facilities"?

21 A. Not within the confines of the wall that you see there at  
22 the left center of the picture.

23 Q. And the wall that you're describing, is that the wall  
24 around the toilet?

25 A. Yes.

1 Q. Mr. Davis, did you use the same methodology that you used  
2 in this particular holding room for all of the holding rooms  
3 that you inspected?

4 A. Yes.

5 Q. Does this mat capacity determination take into account --  
6 I'm sorry, please strike that question.

7 Mr. Davis, are you aware of the room capacity numbers  
8 determined by the fire marshals?

9 A. I'm aware of what it stands for, yes.

10 Q. Do you know whether any of the hold rooms, if any of the  
11 mat capacities that your team determined were reasonable  
12 exceeded the number determined by the fire marshals?

13 A. In no case did it ever exceed the fire marshals'  
14 determination. The fire marshals' determination of the number  
15 of people to go in a holding room like this is simply the  
16 maximum number of people that can go into the room for safety  
17 reasons. It did not take into consideration the mats. The  
18 mat capacity in every holding room is less than the fire  
19 marshal's number.

20 Q. Mr. Davis, did you use any jail or detention standards  
21 when coming up with this mat capacity?

22 A. No. Since this is a holding facility, we did not use  
23 jail or detention facility standards.

24 Q. Why do you distinguish between a holding facility and a  
25 jail or a prison standard?

1 A. Because individuals that are placed into the room that  
2 you see here or any of the other ones are there for a  
3 temporary processing term and then are moved on to other areas  
4 along the CBP processing standard.

5 MS. MASETTA-ALVAREZ: Ms. Kershaw, you can -- will  
6 you please take down the exhibit. Thank you.

7 Ms. Kershaw, if you could pull up joint  
8 Exhibit No. 735 which has been previously admitted into  
9 evidence.

10 BY MS. MASETTA-ALVAREZ:

11 Q. Mr. Davis, do you recognize this document?

12 A. Yes.

13 Q. What is it?

14 A. This is my e-mail to the PAC at Sonoita station. It is  
15 the determination of the mat capacity in each of the holding  
16 room at Sonoita station.

17 MS. MASETTA-ALVAREZ: Ms. Kershaw, can you please go  
18 to page 4 of the exhibit.

19 BY MS. MASETTA-ALVAREZ:

20 Q. Mr. Davis, what is this?

21 A. As I mentioned before, the process as we went through it,  
22 I would take pictures at certain points in the determination  
23 of the mat capacity. This is a picture of one of the holding  
24 rooms, I'm assuming it's at Sonoita, prior -- after we had  
25 cleared the floor and before we started laying mats down in

1 that particular room.

2 MS. MASETTA-ALVAREZ: Ms. Kershaw, please go to the  
3 next photo.

4 BY MS. MASETTA-ALVAREZ:

5 Q. Mr. Davis, what is this a photo of?

6 A. It's a photo of the same room with mats laid down, but  
7 it's from a different perspective, from 180 degrees different.

8 Q. Can you please explain the methodology that you used in  
9 laying down these mats in this room?

10 A. Same thing as I've mentioned before. We tried to find  
11 the maximum amount of mats that we could put into the room  
12 effectively, efficiently and humanely, leaving a path or  
13 pathways for each individual on a mat to get from their mat to  
14 the toilet facilities without crossing over any other mat.

15 Q. Now, Mr. Davis, I see a space between the mats that are  
16 positioned horizontally and then the mats that are positioned  
17 vertically. Was -- did any of your team walk within that  
18 floor space when you were putting down these mats?

19 A. As I mentioned before, yes. Every team member walked  
20 from the edge or the expected exit point of each mat to the  
21 toilet facility in each of the laydowns.

22 Q. Were they able to get off of the mat and walk over to the  
23 fatalities or to an exit without stepping over any other mats?

24 A. Every time. Other than the small corner of a mat on a  
25 very rare time.

1 MS. MASETTA-ALVAREZ: Ms. Kershaw, you can please  
2 remove that exhibit.

3 BY MS. MASETTA-ALVAREZ:

4 Q. Mr. Davis, how does your -- how does the Tucson Sector  
5 monitor mat capacity compliance?

6 A. From the point of responsibility from my particular  
7 department, it's through the compliance evaluations that we  
8 conduct at each station.

9 Q. Now, if exigent circumstances exist such as an influx of  
10 people coming into a station, is it possible that the stations  
11 might go over mat capacity?

12 A. It's possible. The number of people coming in the  
13 holding facilities is very cyclical. It could be a very slow  
14 day and very few individuals are brought into a particular  
15 holding facility, or a mass apprehension at the border of  
16 hundreds of people could occur and all brought to a particular  
17 station.

18 Now, mats are not normally set out until they have --  
19 meet a specific hour in holding criteria. But if they're  
20 already maxed out or close to maxed out on the number of  
21 people totally in the room, and I mentioned that the mat  
22 capacity is less than that level, there are circumstances that  
23 may be met that the facility may have to have more mats than  
24 are allowed.

25 Q. And is there anything that the facility should do when

1 that happens?

2 A. I've directed the facilities to -- the senior staff of  
3 each facility that if that occurs, they are to immediately  
4 document the circumstances. And as I call it, the 5 Ws of  
5 why, where, when. From the time that it's required, why.  
6 What are they doing to remediate it. How long is that  
7 particular situation going to occur and did occur. And as  
8 soon as they can get down to the mat capacity to the room,  
9 that they finalize the documentation of that situation so that  
10 there is a complete record of why we went beyond the current  
11 mat capacity for that particular room.

12 Q. And to the best of your knowledge, Mr. Davis as the  
13 director of policy and compliance, are stations consistently  
14 going over mat capacity?

15 A. No.

16 Q. I want to talk to you about the compliance evaluation  
17 process.

18 Mr. Alexander was in here testifying a little bit earlier  
19 about the evaluation process, and I want to talk to you about  
20 it as well. Are you involved at all on the scheduling of  
21 evaluations?

22 A. I approve the schedules.

23 Q. What time of the day are the -- are the compliance  
24 evaluations scheduled?

25 A. They're normally conducted during daylight hours, what we

1 call our core work hours simply because some of the stations  
2 are an extreme distance from the sector headquarters where  
3 we're stationed. And it takes between two, three hours,  
4 sometimes, to get to some of the stations, conduct the  
5 evaluation which normally takes about one to two hours, and  
6 then to drive back safely.

7 Q. Do you ever do evening evaluations?

8 A. Yes. Recently senior leadership has requested that I  
9 look into doing after-hours evaluations at the sites which  
10 includes either early morning or in the evening. We've  
11 conducted a few of those for test purposes. Mainly, I want to  
12 make sure my folks are safe if they're driving at dark hours.  
13 It has been well received and we are including after-hour  
14 inspections into our normal rotation of schedules so that we  
15 can do one to two stations per quarter on a rotational basis.

16 Q. Will every station under this plan have at least one  
17 night compliance evaluation within a given year?

18 A. Yes.

19 MS. MASETTA-ALVAREZ: Ms. Kershaw, can you please  
20 you pull up joint Exhibit 840.

21 BY MS. MASETTA-ALVAREZ:

22 Q. Mr. Davis, what is this?

23 A. This is the cover memo from our administrative unit for  
24 the distribution of the formal after action report for the  
25 Tucson Coordination Center.

1 Q. And who does this memo go out to?

2 A. As it's addressed here, it's -- it's going to some of the  
3 senior staff of the operations directorate, our local Office  
4 of Chief Counsel, and Mr. DeFreitas and the PACs, and within  
5 the very last "to" address is within my -- everybody in my  
6 department, PCD.

7 MS. MASETTA-ALVAREZ: Ms. Kershaw, please go  
8 to page 2.

9 BY MS. MASETTA-ALVAREZ:

10 Q. And do you recognize this, Mr. Davis?

11 A. Yes. This is the formal evaluation report for Tucson  
12 center, Coordination Center which the previous cover memo  
13 would be on top. This is what is being sent out.

14 Q. Mr. Davis, what is the purpose of this after action or  
15 compliance evaluation report?

16 A. It's the formalization of the findings of each evaluation  
17 by the teams coming from my department going to do -- to  
18 conduct the evaluation. They use the checklist to find  
19 discrepancies, best practices or just items to bring up with  
20 the station management.

21 They -- when an evaluation is complete, we immediately do  
22 what we call a hot wash or just a quick review with the senior  
23 staff of the station so that they understand what we found,  
24 whether it's a discrepancy, whether it's a best practice,  
25 anything that we find that they should be aware of.

1           The inspection checklist is used as the basis for  
2 developing and drafting this report so that -- this is the  
3 official report since this is a sector guidance and directive.  
4 It is the chief patrol agent of the sector who sends it to the  
5 PAC of the station inspected. We develop it and write it for  
6 him, send it through coordination. He signs it there, as you  
7 can see, and it then goes to the memorandum for lines.

8 Q. And why does the Tucson Sector have these after action  
9 reports sent or signed off by the chief patrol agent?

10 A. Chief patrol agent is ultimately the person in charge and  
11 responsible for everything going on in this sector. So it's  
12 his responsibility. This is a requirement that the sector has  
13 established. And because of the injunctive requirements that  
14 we have to ensure compliance, and this is the process that  
15 this sector has developed to get to that point.

16 Q. Mr. Davis, since you started in June 2018, have you  
17 noticed any improvements in the compliance evaluation process?

18 A. There have been a number of improvements both on the part  
19 of a decrease in the number of discrepancies written up, an  
20 increase in the number of best practices written up, and an  
21 acceptance, if you will, on the part of the station personnel  
22 on the benefits of having the compliance evaluations  
23 conducted.

24           A number of times in conversation I've talked with the  
25 senior staff, and they said this is really helping us ensure

1 that we understand what needs to be done. What you write in  
2 these after action reports help us focus on what needs to be  
3 done.

4 I would like to point out that the concept of the  
5 evaluation process is not to finger point. It's to be a  
6 cooperative team effort to find the best way to take care of  
7 people in the holding facilities. To do it effectively. As I  
8 mentioned about the mats, to do it effectively, efficiently  
9 and humanely. That's what we have to do and that's the basis  
10 of our compliance evaluations.

11 Q. Mr. Davis, you mentioned that you've seen a decrease in  
12 the number of discrepancies. Can you remind us what a  
13 discrepancy is?

14 A. The checklist that we use is a multipage document that  
15 lists various requirements from national or sector level  
16 guidance that the stations must follow for the care and  
17 feeding and -- of individuals in the holding facilities. Each  
18 of those steps has one or more references that provides the  
19 reference for what we're asking them and what we're evaluating  
20 them against. And then from there, we develop the after  
21 action report.

22 Q. And what's a discrepancy?

23 A. A discrepancy is when an evaluator finds something that  
24 does not correspond with the requirement in the checklist.

25 Q. So you've seen a decrease in noncompliance with the

1 checklist points?

2 A. Yes.

3 Q. You said you've also seen an increase in best practices.

4 What's a best practice?

5 A. Finding activity or saying an activity at a particular  
6 station where they go above and beyond the requirements in the  
7 checklist. For example, at one of the stations agents bring  
8 in toys for children. We have no direction to give -- to have  
9 toys available for underage or minor people being held at the  
10 facility. They bring in toys. They bring in clothes to  
11 replace some of the clothes that are -- to just replace the  
12 clothes of some of the children.

13 There's a number of ways. How they do activity in the  
14 field. I know one of the ones that Mr. Alexander is very  
15 happy to have noticed is a number of the facilities are now  
16 using a specialized matrix to ensure that all of the food and  
17 any of the items that they -- that we have to provide during  
18 the care of or the holding facility time doesn't go beyond its  
19 suspense dates. Some of the suspense dates were very hard to  
20 determine, but they have developed a matrix that now helps  
21 them determine for everything that has a suspense date, they  
22 make sure it doesn't go beyond the suspense date.

23 Q. When you said "suspense date," what do you mean by that?

24 A. You look on any kind of manufactured item, food, clothes,  
25 medicines, there's a suspense date or an effective date that

1 you do not want to go beyond.

2 Q. Is that similar to an expiration date?

3 A. Yes.

4 Q. Okay. Do other -- do other facilities sometimes develop,  
5 adopt these best practices?

6 A. The -- it is the choice of the other stations whether  
7 they wish to do that. Each of the stations are uniquely  
8 situated. Their buildings, their rooms are all different.  
9 The locations where they're at, it's all unique for their  
10 station. It is a best practices for them to know about and  
11 that's why we put them in the after action report, but it is  
12 not directed. It is only voluntary if they wish to do it or  
13 to do it and change it to meet their needs.

14 Q. When you say you include them in the after action report,  
15 do you mean that you include all the patrol agents in charge  
16 in any given compliance evaluation?

17 A. These memorandums, the holding facility after action  
18 reports, when it goes to the PAC of the station evaluated,  
19 it's also sent to every other PAC in the sector, each patrol  
20 agent in charge.

21 Q. Mr. Davis, we've talked a little bit about improvements  
22 that you've seen in the compliance evaluations. I also want  
23 to talk to you about improvements that you've seen within your  
24 division. Have you seen any improvements in the way that you  
25 conduct compliance evaluations since you've been -- since you

1 came on in June 2018?

2 A. The people have -- my leadership process is to give as  
3 much responsibility to the individuals doing the job. I give  
4 them what they need to do. They determine how to do it.

5 Mr. Alexander, with his military background, has been  
6 exemplary in making the compliance evaluation checklist a  
7 living document, so to speak. It's gone through many, many  
8 variations. As we learn of new guidance or guidance somewhat  
9 changes, we have to make sure that the checklist evolves with  
10 that.

11 One of the items that both Mr. Alexander and I found when  
12 we both came in to policy and compliance department, which was  
13 basically the same time, is the checklist was never sent to  
14 the field. We would go out as PCD, policy and compliance  
15 department, to do an evaluation and the field -- each of the  
16 stations didn't have the checklist. We would show up and  
17 start going, Well, do you have this? Do you do this? Maybe.  
18 I don't know. They had no idea what was going on. And that  
19 wasn't right.

20 This goes back to the idea that this is a team effort to  
21 do the best, not a finger-pointing exercise. So now one of  
22 the things that we changed is any time the checklist changes,  
23 it goes out to every station immediately.

24 MS. MASETTA-ALVAREZ: A moment to confer.

25 THE COURT: Sure.

1 MS. MASETTA-ALVAREZ: Thank you, Mr. Davis.

2 Defendants are finished with direct examination.

3 THE COURT: All right. Any cross?

4 MR. LONDEN: Yes.

5 CROSS-EXAMINATION

6 BY MR. LONDEN:

7 Q. Good afternoon, Director Davis. We met before. I'm Jack  
8 Londen.

9 A. Nice to see you again, sir.

10 Q. You, too.

11 One of your functions is to make sure that the policy  
12 that applies to Tucson Sector including policy with respect to  
13 hold rooms is promulgated and identified and known to the  
14 sector; correct?

15 A. That is correct.

16 MR. LONDEN: Could we put up joint Exhibit 9?

17 BY MR. LONDEN:

18 Q. This is already in evidence, Director Davis. And it is  
19 the -- it's entitled Hold Rooms and Short Term Custody, dated  
20 June 2, 2008. Do you recognize this?

21 A. I recognize it, yes. Yes, I do.

22 Q. And is this policy that governs holding rooms still?

23 A. May I take a -- a minute to read?

24 Q. We can -- I will have to help you scroll through it if  
25 you need to look beyond the first page.

1 A. I just need to read the first page.

2 After reading the document, it could possibly still be  
3 current, but I don't know.

4 MR. LONDEN: Could we put up joint Exhibit 863,  
5 please.

6 BY MR. LONDEN:

7 Q. 863 is not yet in evidence. It is dated October 3, 2019.  
8 Its subject is Hold Rooms and Short Term Custody Policy. It's  
9 from Chief Patrol Agent Roy D. Villareal to command staff and  
10 others.

11 Do you recognize this?

12 A. Yes, I do.

13 MR. LONDEN: We offer this in evidence, your Honor.

14 THE COURT: It's admitted.

15 (Exhibit 863 entered into evidence.)

16 THE COURT: I took your silence as no objection.

17 MS. MASETTA-ALVAREZ: No objection.

18 BY MR. LONDEN:

19 Q. The first sentence says, The attached memorandum, Hold  
20 Rooms and Short Term Custody dated June 2, 2008, remains the  
21 national level guiding policy on short-term custody. End my  
22 quote there.

23 Please take whatever time you need to review this  
24 document. And my question will be, does this indicate that  
25 the hold rooms and short-term custody is at least in part

1 still applicable?

2 A. Yes, it does.

3 Q. All right. It says, "All patrol agents in charge will  
4 ensure that this policy is available to all agents assigned to  
5 their respective stations," in the second paragraph. Do you  
6 see that?

7 A. Yes.

8 Q. And the third paragraph says, It is important to point  
9 out that since this national policy was published, another  
10 national level policy has also been published, U.S. Customs  
11 and Border Protection, CBP, *National Standards on Transport,*  
12 *Escort, Detention and Search (TEDS)*, dated October 15 --  
13 October 2015. I'm ending my quote there.

14 Are you familiar with the TEDS program?

15 A. I am.

16 MR. LONDEN: Could we put up joint Exhibit 74,  
17 please.

18 BY MR. LONDEN:

19 Q. Is this the first page of the TEDS standard?

20 A. I believe so.

21 Q. Back to joint Exhibit 863, please.

22 Continuing in the third paragraph. TEDS is the  
23 comprehensive CBP policy related to safety, security, and care  
24 of detainees which reinforces the current standards under the  
25 Hold Rooms and Short Term Custody Policy. Then it says, There

1 may be instances where the two policies differ; in these  
2 circumstances, the more restrictive policy takes precedence.

3 Do you see that?

4 A. Yes.

5 Q. And the term "more restrictive policy," that means the  
6 policy that imposes more restrictions on the Border Patrol?

7 A. That was the interpretation, yes.

8 MR. LONDEN: Look, please, at joint  
9 Exhibit 9, page 4. The hold room policy section 6.2.

10 BY MR. LONDEN:

11 Q. At the bottom, it says, Duration of Detention, 6.2.1.  
12 Whenever possible, a detainee should not be held for more  
13 than 12 hours. Every effort will be made to promptly process,  
14 transfer, transport, remove or release those in custody as  
15 appropriate and as operationally feasible. I'm ending my  
16 quote there.

17 Do you understand that to be the duration of detention  
18 provision under this policy?

19 A. It is the level of detention time frame as outlined in  
20 this policy, yes.

21 MR. LONDEN: Could we look at joint Exhibit 74, the  
22 TEDS standard at page 14, section 4.1.

23 BY MR. LONDEN:

24 Q. That also has a duration of detention section that says,  
25 Detainees should generally not be held for longer than

1 72 hours in CBP hold rooms or holding facilities. Every  
2 effort must be made to hold detainees for the least amount of  
3 time required for the processing, transfer, release or  
4 repatriation as appropriate and operationally feasible.

5 Ending my quote.

6 That is the duration of detention policy statement in  
7 TEDS; correct?

8 A. I believe so.

9 Q. Going back to joint Exhibit 863, in that third paragraph,  
10 that last sentence that we considered refers to instances  
11 where the two policies differ, saying in those circumstances,  
12 the more restrictive policy takes precedence, ending my quote  
13 there.

14 The 72-hour limit of TEDS Section 4.1 does not override  
15 the 12-hour whenever possible standard of Section 6.2 of the  
16 2008 hold room policy; correct?

17 A. I don't know. This is not my policy. This is not one  
18 that was written by my office. It was written by the office  
19 that Agent Carrie Davison is in.

20 Q. This being the memo?

21 A. The memo, yes, the memo --

22 Q. 863.

23 A. -- that brings the two policies together with the third  
24 paragraph there or the -- yes, the last line of the third  
25 paragraph.

1 Q. Do you have any reason to doubt that this memo which  
2 we've labeled 863 is authoritative?

3 A. I don't doubt it as being authoritative. However, it  
4 doesn't apply to PCD and our compliance evaluations.

5 Q. All right. Does it apply to the stations?

6 A. It applies to the stations because it's a holding  
7 directive. But that's not the responsibility of the  
8 compliance evaluation that I conduct. That's a responsibility  
9 and a subjective decision requirement in the operational  
10 division and at the particular station.

11 Q. And for purposes of your compliance review, your  
12 checklist, which has been marked as joint Exhibit 870 and it's  
13 in evidence --

14 MR. LONDEN: Can we put that up?

15 BY MR. LONDEN:

16 Q. -- that checklist does not include any item about length  
17 of detention; correct?

18 A. I believe so. I'd have to read over it in detail, but I  
19 don't believe it has anything to do with detention time  
20 frames.

21 Q. So that's not something that is overseen in the  
22 compliance review process?

23 A. That is correct.

24 Q. And it's the case that you've never had the occasion to  
25 determine the length of detention of any detainees; correct?

1 A. That is not a responsibility of the compliance inspection  
2 nor is it listed on the inspection checklist.

3 Q. Is it correct as a general matter that subjects that are  
4 not listed on your checklist are outside the scope of the  
5 compliance evaluation?

6 A. Yes.

7 Q. And is it correct that the compliance review process does  
8 not consider the contents of any medical assessment or the  
9 documentation of any medical assessment?

10 A. That is correct.

11 Q. Is it correct that the compliance evaluation review does  
12 not consider the medical competence of the personnel who  
13 conduct medical interviews or assessments?

14 A. We do not make that determination.

15 Q. You have thoroughly explained the way that the mat  
16 capacity maximums were determined. Is there a time frame,  
17 that is, a definition of what times of day that maximum  
18 capacity standard for mats applies?

19 A. Not based on time of day.

20 Q. When is the policy applicable?

21 A. When the requirement for -- when the time requirement for  
22 an individual that is being held in that room is met and  
23 requires a mat to be provided for that individual, if the  
24 number of individuals in that room who are required to have  
25 mats reach the maximum capacity, that's when they stop issuing

1 mats and remove anyone above that number to other holding  
2 rooms.

3 Q. That's what's supposed to happen?

4 A. Yes.

5 Q. Now, I heard you just say that the -- that you had  
6 instructed the staff of facilities to document noncompliance  
7 with the mat capacities. How long ago did you give that  
8 instruction?

9 A. It was after the May 29th memo that went out to all  
10 stations. Normally, I was giving it during the development of  
11 the mat numbers at each station. They asked the question.  
12 They were worried what happens if we have to go beyond. And  
13 that's when I made the determination to tell them there are  
14 operational situations that you cannot control at each station  
15 where you will find it necessary to go beyond the mat  
16 capacity. Document it from start to finish so that there is a  
17 reasonable historical document that you can -- you or anyone  
18 after you write it up can refer to as to why it occurred.

19 Q. Was that advice in a written memo?

20 A. No.

21 Q. Oral?

22 A. Oral.

23 Q. Have you received some -- such reports? Have you  
24 received reports in compliance with that instruction?

25 A. No. It was not that they had to submit them to me. That

1       they had to keep them on their record at the station.

2       Q.     Have you seen them?

3       A.     No.

4       Q.     To your knowledge, has anyone asked whether such reports  
5     can be found? I would like to know what the name is.

6       A.     I've never been asked to provide them or to ask for them.

7       Q.     We have not seen any such reports and if we wanted to ask  
8     for them, who should we ask?

9       A.     I would go to Mr. DeFreitas.

10            MR. LONDEN: Okay. Your Honor, I'm done. I pass  
11     the witness.

12            THE COURT: Any redirect?

13            MS. MASETTA-ALVAREZ: One moment, your Honor.

14            Nothing further, your Honor.

15            THE COURT: All right. Mr. Davis, you can step down  
16     and be excused. Thank you, sir.

17            THE WITNESS: Thank you.

18            THE COURT: Next?

19            MS. FABIAN: Your Honor, our next witness has just  
20     arrived on a plane. We've gotten him here early, but he's  
21     just arrived on a plane in Tucson. I've spoken to Mr. Londen,  
22     and we're hoping if there's about an hour left, he's got about  
23     an hour of deposition designations. So we thought we could  
24     use this time for that if that's acceptable to everyone, and  
25     our witness will be here first thing tomorrow morning.

1                   THE COURT: Okay. Let's do that.

2                   MR. LONDEN: Ms. Fabian asked for time schedule  
3 accommodation. We're happy to use the time. I won't promise  
4 it lasts the entire hour, but we have entire deposition  
5 designation on video.

6                   THE COURT: All right. Good. Let's do it.

7                   MR. LONDEN: All right. First off is of Raleigh  
8 Leonard.

9                   (Exhibit played.)

10                  MR. LONDEN: Your Honor, that concludes the excerpts  
11 from Raleigh Leonard.

12                  The next one is George Allen.

13                  MS. FABIAN: Your Honor, you asked Mr. Leonard's  
14 title, and I don't think I saw --

15                  MR. LONDEN: Assistant chief deputy.

16                  THE COURT: Yeah, at the time, but that was back  
17 in -- he was assistant --

18                  MS. FABIAN: He was actually the division chief, and  
19 I believe acting as the deputy chief at the time.

20                  THE COURT: But that's back in '17; correct?

21                  MS. FABIAN: Correct. And retired about a year ago.

22                  MR. LONDEN: He's retired.

23                  The next is a deposition of 30(b) (6) deposition of  
24 George Allen and the defendant will appear here.

25                  (Exhibit played.)

1                   MR. LONDEN: The next excerpt is from the deposition  
2 of George Allen, the same witness on April 7, 2017.

3                   (Exhibit played.)

4                   MR. LONDEN: We have one more excerpt. It's of  
5 someone on the defendant's may call list. This is -- it's  
6 Anthony Weitz, October 24th, 2019, deposition.

7                   THE COURT: How long will that take?

8                   MR. LONDEN: Ten minutes.

9                   THE COURT: Okay. Let's do it.

10                  (Exhibit played.)

11                  MR. LONDEN: That completes our deposition  
12 designations, your Honor.

13                  THE COURT: All right. Let's quit for the day. I'm  
14 toast.

15                  So we'll start at 9:00. You be here at 9:00.  
16 Hopefully, we can start a couple of minutes after. I've got  
17 something to do. Okay. So 9:00 tomorrow morning.

18                  MS. FABIAN: Sounds good, your Honor, thank you.

19                  MS. MASETTA-ALVAREZ: Thank you.

20                  (Proceedings adjourned at 4:49 p.m.)

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1 C E R T I F I C A T E  
2

3 I, Cheryl L. Cummings, certify that the  
4 foregoing is a correct transcript from the record of  
5 proceedings in the above-entitled matter.

6

7 Dated this 16th day of January, 2020.

8

/s/Cheryl L. Cummings

9

Cheryl L. Cummings, RDR-CRR-RMR-CRC-CRI  
10 Federal Official Court Reporter

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